TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1905.

No. 230.

BERYL F. CARROLL, AUDITOR OF STATE OF THE STATE OF IOWA, APPELLANT,

vs.

THE GREENWICH INSURANCE COMPANY OF NEW YORK ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

FILED JUNE 20, 1904.

(19,399.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 14, 1904.

a Pleas in the circuit court of the United States for the southern district of Iowa, central division, at a term thereof begun and holden in the city of Des Moines, in said district, on the — day of November, 1903, before the Hon. Smith McPherson, one of the judges of said court presiding.

1 Be it remembered that heretofore, to-wit:—on the 12th day of March 1903, there was filed in the clerk's office of said court for said district, at Des Moines, Iowa by the Greenwich Insurance Company of New York, *et al.* a bill of complaint against Byrel F. Carroll, auditor of the State of Iowa, which said bill of complaint is in words and figures following, to-wit;—

In equity.

To the honorable the judges of the circuit court of the United States for the southern district of Iowa, central division:

THE GREENWICH INSURANCE COMPANY OF NEW YORK, a Corporation Organized and Existing under the Laws of the State of New York, Having its Principal Place of Business in the City of New York, and a Citizen of New York;
The Insurance Company of North America, of Philadelphia, a Corporation Organized and Existing under the Laws of the State of Pennsylvania, Having its Principal Place of Business in the City of Philadelphia, and a Citizen of Pennsylvania;
The Hanover Fire Insurance Company of New York, a Corporation Organized and Existing under the Laws of the State of New York, Having its Principal Place of Business in the City of New York, and a Citizen of New York;
National Fire Insurance Company of Hartford, a Corporation Organized and Existing under the Laws of the State of Connecticut, Having its Principal Place of Business in the City of Hartford, and a Citizen of the State of Connecticut;
Orient Insurance Company of Hartford, a Corporation Organized and Existing under the Laws of the State of Connecticut, Having its Principal Place of Business in the City of Hartford, and a Citizen of the State of Connecticut;
British-American Insurance Company of New York, Organ-
2 ized and Existing under the Laws of the State of New York, Having its Principal Place of Business in the City of New York, and a Citizen of the State of New York;
Manchester Assurance Company of Manchester, England, a Corporation Organized and Existing under the Laws of Great Britian, Having its Principal Place of Business in the City of Manchester, and a Citizen of Great Britian;
Sun Insurance Office of London, a Corporation Organized and

Existing under the Laws of Great Britian, Having its Principal Place of Business in the City of London, and a Citizen of Great Britian;

London & Lancashire Fire Insurance Company, a Corporation Organized and Existing under the Laws of Great Britian, Having its Principal Place of Business in the City of London, and a Citizen of Great Britian;

Western Assurance Company of Toronto, a Corporation Organized and Existing under the Laws of the Dominion of Canada, Having its Principal Place of Business in the City of Toronto, and a Citizen of the Dominion of Canada;

British American Assurance Company of Toronto, a Corporation Organized and Existing under the Laws of the Dominion of Canada, Having its Principal Place of Business in the City of Toronto, and a Citizen of the Dominion of Canada;

Suing on Their Own Behalf and on Behalf of All Other Fire Insurance Companies Similarly Situated Who May Come in and Contribute to the Expenses of This Suit, Bring This Their Bill, Complainants,

against

BYREL F. CARROLL, Auditor of State of the State of Iowa, a Citizen of the State of Iowa, Defendant.

And thereupon your orators complain, and say:

I. That each of your orators is a corporation created, organized and existing, and having its principal place of business, as set forth in the title of this, their bill, and is a citizen of the State or the country therein stated. That the defendant Byrell F. Carroll is, and since the 1st day of January, 1903, has been auditor of State of the State of Iowa, and is a citizen of the State of Iowa.

The amount in controversy in this suit between each of your orators, on the one side, and the defendant, on the other, exceeds two thousand dollars ($2000.00) over and above interest and costs.

3 II. Each of your orators are now, and during all the time hereinafter alleged, have been possessed of at least two hundred thousand dollars ($200,000.00) of actual paid up capital, exclusive of any assets deposited in other States and Territories for the special benefit or security of the insurance therein.

Many years ago, being desirous of transacting the business of insurance in the State of Iowa, and under, in accordance with, and in obedience to the laws of the said State, your orators made application, in due form, to be permitted to do business in the State of Iowa, and filed with the auditor of state a written instrument duly signed and sealed authorizing said auditor to acknowledge service of notice or process for and in behalf of such company in this State, and consenting that service of notice or process be made upon the auditor of State, and filed with the auditor a certified copy of its charter, articles of incorporation, or deed of settlement, together

with a statement, under oath of the principal officer of said corporation, stating the name of the company, the place where located, the amount of its capital, with a detailed statement of the facts and items required from companies organized under the laws of this State, and a copy of the last annual report made under the laws of the State or country by which such company was incorporated, and did all and singular the acts, and complied with all the requirements of the State of Iowa, and paid all the fees required by law to entitled it to do business in the State of Iowa.

That thereupon, and upon a day which your orators are not able at this time to particularly state, the auditor of state issued to it a certificate that it had fully complied with the requirements of law and had become entitled to do business in the State of Iowa.

4 That thereafter it paid annually into the State treasury, as taxes, all sums required by law and all fees required of it to comply fully with the requirements of law, and kept its capital secure and its investments unimpaired; and thereupon on the first day of March annually, the auditor of State issued to it his certificate certifying that it had fully complied with the requirements of law and was entitled to do business in the State of Iowa.

That prior to the 1st day of March, 1903, each of your orators, having carried on its business for many years in the State of Iowa as aforesaid, and having annually paid into the treasury of the State of Iowa large sums of money as taxes for the privilege of doing business in the State of Iowa, and having complied with all the requirements of the laws of the State of Iowa, did, on or about the month of February, pay into the treasury of the State of Iowa large sums of money, and did all and singular the things required of it to entitled it to continue to do business in the said State, and on or about the 1st day of March, 1903, the auditor of state of the State of Iowa issued to it the proper certificate setting forth that it had complied with the insurance law of this State and was authorized to continue the business of fire insurance therein for the current year; and each of your orators is desirous of continuing in the business of fire insurance in the State of Iowa, and is ready, able and willing to comply with each and all of the requirements of law entitling it to do business in the said State.

III. That each of your orators has established and maintained extensive and expensive agencies in the State of Iowa for the transaction of the business of fire insurance, and has built up and maintained an extensive business in fire insurance therein, and has now

5 outstanding in the State of Iowa a large number of policies insuring property in the State of Iowa, and owned by the citizens thereof, aggregating in value large sums of money, and has adjusted and paid large sums of money for property insured and destroyed by fire.

IV. There are many insurance companies, not less than eighty-five in number, incorporated under the laws of States other than the State of Iowa and of foreign countries, which have been for many

years last past and still are engaged in insuring property in this State from loss by fire, each of which, when it began business therein, complied with the requirement of the statutes thereof in all respects and were entitled to, and received, from the auditor of State of the State of Iowa, his certificate to the effect that they were authorized to carry on said business. During all of that time, each of said companies has paid annually large sums of money to the treasurer of state of the State of Iowa, as required by the statutes of the said State; and, desiring to continue its said business, proposes to pay such sums as are required to be paid for such privilege and make such showing of its present condition as will demonstrate its financial competency and comply in all respects with the laws of the State of Iowa; and all of said companies, by reason of their compliance with the statutes as aforesaid, are and will be entitled to carry on such business in this State.

By reason of their great number, it is impracticable for them to join in this, your orators' bill, and they, as well as your orators will be subjected to a multiplicity of suits if each is compelled to exhibit its bill on its own behalf complaining of the matters in respect whereof relief is herein prayed.

6 V. By section 1754 of the Code of Iowa, it is provided that "It shall be unlawful for two or more fire insurance companies doing business in this State, or for the officers, agents or employés of such companies, to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amounts of commissions to be allowed agents for procuring the same, or the manner of transacting the fire insurance business within this State, and any such company, officer, agent or employé violating this provision shall be guilty of a misdemeanor." It is further provided by said section that upon the violation thereof a heavy penalty and fine shall be imposed.

By section 1755 of the Code of Iowa, it is made the duty of the auditor of state to summon before him for examination, under oath, any officer, agent or employé of any such company, suspected of violating any of the provisions of section 1754; and upon complaint being made in writing by two or more residents of the State charging such company, under oath, with violating the provisions of said section, it is made his duty to summon before him any officer, agent or employé of such company, and if upon examination he shall determine that such company is guilty of a violation of any of the provisions of said section, or if any such officer, agent or employé, being duly summoned, shall fail to appear, to issue an order revoking the authority of any such company to transact business within this State and providing that they shall not thereafter be permitted to do business in the State at any time within one year therefrom.

VI. Many years ago, fire insurance companies in this and other commercial countries began to collect and preserve full, careful and accurate accounts of fires, their cause, origin, and all other attendant circumstances, and to subject the mass of

7

data to analysis and classification for the purpose and with the result of ascertaining with a reasonable degree of certainty what was the general average of fires and the losses arising therefrom with the different classes of risks, whereby it became possible to ascertain, and it was ascertained, what was the real, true, and fair value of risks taken and assumed by parties who insure property against losses by fire. In doing business in the State of Iowa, your orators and other fire insurance companies are confronted with new and varying conditions, all of which affect the value of risks of fire insurance, and an examination of these conditions, relating to the method of constructing buildings, the material of which they are composed, their location and consequent exposure to fire from adjacent properties, the kind of business carried on in said buildings the extent, nature and kind of fire protection of the various towns and cities of the State, and an almost infinite variety of conditions bearing upon the probability of loss by fire, is necessary to the end that it may be ascertained what is the real, true and fair value of risks of fire insurance to be taken and assumed by your orators upon property in this State. It is essential that they be permitted to avail themselves, not only of their own experience, but of the experience of other fire insurance companies, and that all data obtainable as to the cause, origin, and all the circumstances connected with fires under the varying circumstances by which they were surrounded, be gathered together in one mass and subjected to scientific analysis and classification so that it may be ascertained with a reasonable degree of certainty what is the general average of fires, and the extent of losses therefrom, arising out of certain classes of
8 risks, and thereby the real, true and fair value of such risks definitely and scientifically ascertained.

That in order to ascertain the true and equitable rates to be charged for the different classes of risks in insurance, it is necessary for your orators, and the other fire insurance companies doing business in Iowa, to combine their experiences in the manner aforesaid, and to deduce therefrom the just and true value of the several classes of risks; and your orators, and those for whom they sue, are desirous, when, as the result of their combined experiences, the true value of risks are ascertained, to charge such sum for the various classes of risks as shall represent and shall be the real, true and fair value of the risks taken and assumed by them.

VII. Under the law above referred to, each of your orators, in its endeavor to ascertain the fair value of the risks of insurance, is compelled to employ some person to ascertain from such experience as is to him obtainable, the fair and just value of the risks to be by it assumed; and owing to the limited extent of experience of each of your orators, a much less accurate rate can be thus ascertained than would be a rate drawn from the combined experience of all of your orators and the various companies doing business in Iowa. Then, too, the expense to each of your orators of employing a person to ascertain and determine the value of the risk to be assumed

by it is greatly increased where each of your orators is compelled to employ such person from what it would be if the data obtained from their combined experience could be placed in the hands of some person employed by all for the purpose of ascertaining what would be the just and equitable value of the various classes of risks to be assumed by them.

VIII. An observance of the provisions of section 1754 of the
9 Code greatly hinders, and in truth makes it practically impossible, for your orators to combine their experiences and to subject their combined experience to an analysis and classification by some person employed for the purpose of ascertaining what is the just and true value of risks of insurance; notwithstanding which, if they shall attempt to so combine their experiences and employ some person to ascertain therefrom the reasonable, just and equitable cost of risks of insurance, they charge, upon information and belief, that the defendant will proceed to carry out the provisions of the sections of the code of Iowa aforesaid, and will summon before him your orators and the officers and agents thereof, and will proceed to revoke their authority to do business in the State of Iowa, and will not thereafter permit your orators to do business in the State of Iowa, all to their great and irreparable injury.

IX. Your orators, for themselves and for others similarly situated, complain of the provisions of the code of Iowa hereinbefore referred to for the reason that the said provisions, and the several sections immediately following the same and which appertain to the method of procedure for the enforcement of the provisions of sections 1754 and 1755 — for the reason that said sections of the code of Iowa violate and infringe the provisions of the constitution of the State of Iowa and the Constitution of the United States, in the following particulars, to-wit.

First. For as much as section 6 of article I of the constitution of Iowa provides that "all laws of a general nature shall have uniform operation. The General Assembly shall not grant to any citizen or class of citizens privileges or immunities which in the same
10 terms shall not equally apply to all citizens."

Section 1754 is a law of a general nature, and it does not have a uniform operation in that, while all other citizens of the State of Iowa are permitted to make agreements as to commissions to be allowed their agents, or the manner of conducting their business, or the rates to be charged for commodities, fire insurance companies, are, by the section referred to, deprived of privileges granted to all other citizens of the State of Iowa; and the said law is not uniform in its operation in that it operates alone upon fire insurance companies, and by said section privileges and immunities which are granted to all other citizens of the State of Iowa and to persons doing business therein, are taken from fire insurance companies.

Second. Section 1754 of the Code and the several sections immediately following the same, to-wit, sections 1755, 1756 and 1757, violate and infringe article XIV of the amendments to the Con-

stitution of the United States whereby it is provided that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws because they purport to vest in the auditor of State the power to revoke the rights and privileges of your orators and the aforesaid companies to do business in this State for exercising their right to contract concerning matters which it is proper and right to contract and to do those things which are essential to the proper conduct of the business of the said companies, and by the provisions of the said law your orators and other fire insurance companies are denied the equal protection of the laws of the State of Iowa such as are possessed by all other citizens and persons doing business in the State of Iowa, and because by said provisions
11 your orators may be deprived of their property rights without due process of law.

Third. Section 10 of article I of the Constitution of the United States provides that no State shall pass a law impairing the obligation of contracts, and the said sections referred to purport to forbid and make unlawful any combination or agreement by or between two or more fire insurance companies, or between their officers, agents or employés, relating to the rates to be charged for insurance, amount of commissions to be allowed agents for procuring the same, or the manner of transacting their business, the right to do each and every of which was vested in the said companies and each of them by the acts by which they began and prosecuted their business in this State; and your orators, and each of them, and the other fire insurance companies for whom they sue, each and all paid large sums of money on account of said privilege and have made large expenditures in establishing and maintaining agencies and in building up their business in the State of Iowa, the benefits of which are largely lost to them if they shall be deprived of the right to combine their experiences and to employ persons or bureaus to ascertain and advise as to the just and equitable rates to be charged for various risks of insurance, and to make agreements as to their methods of doing business.

X. Your orators further show to the court that not only are they desirous of combining their experiences and subjecting the data gathered by them to a person to be employed by your orators and other fire insurance companies similarly situated for the purpose of analysis and classification to the end that a just and equitable value of carrying various risks of insurance may be ascertained for
12 the guidance and assistance of your orators in establishing rates to be charged; but they are also desirous of conferring, consulting and agreeing as to what classes of risks are non-insurable, as to what shall be regarded as moral hazards, and what shall be regarded as physical hazards, as to how various risks shall be classified, and as to other matters relating to the manner of doing business, to the end that the most efficient services can be rendered to property owners and citizens of the State of Iowa desiring fire

insurance, and to the end that just and equitable rates of insurance may be ascertained upon the various classes of risks; all of which would be beneficial, not only to your orators and the other insurance companies doing business in the State of Iowa, but will be beneficial and conducive to the welfare of the people of this State.

XI. Your orators further allege and charge, upon information and belief, that if your orators shall proceed in the manner hereinbefore alleged, complaint in writing will be made to the defendant charging your orators with violating the provisions of section 1754, and that the defendant as auditor of state will, in any event, summon before him for examination, under oath, the officers, agents or employés of your orators, or some of them, and that he will upon such examination issue an order revoking the authority of your orators, or some of them, to transact business within the State, and thereby incur an irreparable injury, all of which is contrary to equity and good conscience and tends to the manifest wrong and injury of your orators and all others similarly situated.

XII. And for as much as your orators can have no adequate relief except in this court, and to the end that the defendant, may, if he can, show why your orators and all others similarly
13 situated for whom they sue should not have the relief herein prayed, and that defendant answer this, your orators' bill, according to the course of practice of this court, but not under oath, his answer under oath being hereby expressly waived, and that it be declared by the decree of your honors that the provisions of the code of Iowa above referred to are in conflict with and in violation of the constitution of the State of Iowa and the Constitution of the United States for the reasons hereinbefore stated and for such other and further reasons as may by your honors be found to exist, and it be decreed that the said sections, and each of them, are void and of no effect, and that the defendant be by the order and injunction of your honors enjoined and restrained as follows:

That he, the said Byrel F. Carroll, auditor of state of the State of Iowa, and his successors in office, be enjoined from in any manner calling or bringing before him for examination, under oath, any officer or employé of your orators, or any other fire insurance company which may be in the same situation as your orators, for examination, under oath, of such officer or employé, and also from entertaining any complaint made to him in writing or otherwise by any party or parties charging any or either of the companies aforesaid with a violation of section 1754 of the Code of Iowa aforesaid, and from calling or causing to be brought before him upon such complaint for examination before him, under oath, any officer or employé of any or either of said companies, or institu-ing or prosecuting or holding such examination or an examination of any other witness or witnesses; and that he be further in like manner enjoined and restrained from issuing an order revoking the authority of any of said companies to transact business within the State, or in any

wise interfering with such company in transacting the busi-
14 ness of fire insurance in the State: and that he may be enjoined from in any manner enforcing any of the provisions of sections 1754, 1755, and 1756 of the Code of Iowa, and from revoking the authority of your orators, or any of them, or any fire insurance company similarly situated, from transacting business within the State for, on account of, or because of any alleged or claimed violation of the provisions of section 1754; and that he be enjoined from instituting any proceeding of any kind or character designed to enforce the provisions of said section 1754.

May it please your honors to grant unto your orators, and all other fire insurance companies similarly situated, a writ of injunction issuing out of this honorable court, and under the seal thereof, directed to the defendant herein and to his successors in office perpetually enjoining and restraining the defendant and his successors in office, as hereinbefore prayed; that your orators have and recover judgment for their costs herein expended; and that they have all such other and further relief as the circumstances of this case require and as is agreeable to equity and good conscience; that a writ of subpœna of the United States of America issue directed to the defendant, commanding him, at a day therein named, to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the court shall seem meet and as is required by the principles of equity and good conscience.

(S'g'd) J. C. DAVIS AND
CARR, HEWITT, PARKER & WRIGHT,
Solicitors for Complainants.

(S'g'd) GEO. H. CARR, *Of Counsel.*

STATE AND SOUTHERN DISTRICT OF IOWA, } ss:
County of Polk, }

15 I, George R. Crossley, being duly sworn, depose and say that I am the agent for the State of Iowa for The Western Assurance Company and The British America Insurance Company of Toronto, Canada, two of the complainants in the foregoing bill; that I have read the said bill and know the contents thereof and the matters and things therein alleged are within my personal knowledge; and that said bill is true except as to matters therein stated upon information and belief, and as to those matters I believe them to be true.

(S'g'd) GEO. R. CROSLY.

Subscribed and sworn to before me this 11th day of March, 1903.

(S'g'd) FRED P. CARR,
[SEAL.] *Notary Public, Polk County, Iowa.*

(Endorsed:) In U. S. circuit court, central division, southern district, of Iowa. The Greenwich Ins. Co. of New York, *et al. vs.* B. F. Carroll, auditor. Bill of complaint. Filed March 12, 1903 E. R. Mason, clerk, J. C. Davis and Carr, Hewitt, Parker & Wright, soliciter- for complainants.

16 And on the same day, to-wit: the 12th of March, 1903, there issued out of said clerk's office a subpœna in chancery, directed to the said Byrel F. Carroll, which was afterwards on the 13th day of March 1903 returned into said clerk's office by the marshal of said district and which said subpœna, together with the return thereon, is in words and figures following, to-wit;—

UNITED STATES OF AMERICA,
Central Division, Southern District of Iowa.

The President of the United States to Byrel F. Carroll, auditor *for* state of the State of Iowa:

We command you, and each of you, that you appear before the judge of the circuit court of the United States for the southern district, of Iowa, at Des Moines, on the first Monday of April it being the sixth day of April next (A. D. 1903) to answer to the bill of complaint of the Greenwich Insurance Company of New York; the Insurance Company of North America of Philadelphia; the Hanover Fire Insurance Company of New York; National Fire Insurance Company of Hartford; Orient Insurance Company of Hartford; British American Insurance Company of New York; Manchester Assurance Company of Manchester England; Sun Insurance Office of London; London & Lancashire Fire Insurance Company; Western Assurance Company of Toronto; British-America Assurance Company of Toronto this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the said district of Iowa: Returnable to the April rule day, it being Monday, the sixth day of April A. D. 1903.

Witness, the Honorable Melville W. Fuller, Chief Justice of
17 the Supreme Court of the United States, at the city of Des Moines, Iowa, this the 12th day of March A. D. 1903 and of
[SEAL.] the Independence of the United States the 127th.

(S'g'd) EDWARD R. MASON,
Clerk U. S. Circuit Court, Southern District of Iowa.

MEMORANDUM.—The within named defendant is notified that unless he enter his appearance in the clerk's office of
[SEAL.] said court, at Des Moines aforesaid, on or before the day to which the above writ is returnable, as above

stated the complaint will be taken against him as confessed, and a decree entered thereon accordingly.

(S'g'd) EDWARD R. MASON,
Clerk U. S. Circuit Court, Southern District of Iowa.

No. 2410. Eq.

Subpœna in Chancery.

Circuit Court of the United States, Southern District of Iowa, Central Division.

GREENWICH INSURANCE CO. ET AL.
vs.
BYRELL F. CARROLL, Auditor.

Returnable to rule day first Monday in April A. D. 1903. E. R. Mason clerk.
Filed March 13th A. D. 1903. E. R. Mason clerk.

J. C. DAVIS,
CARR, HEWITT PARKER & WRIGHT,
Comp'ts Sol.

Residence Des Moines.
437–119. Hedrick Mar. 12, 1903.

18 This writ came into my hands for service on the 12 day of March A. D. 1903 and I served the same on the within named Byrel F. Carroll auditor *for* state on the 13 day of March 1903, by delivering a true copy to him at Des Moines in the county of Polk and State of Iowa.

(S'g'd) GEO. M. CHRISTIAN,
U. S. Marshal.
H. L. HEDRICK, *Deputy.*

Marshal's Fees.

St. car fare	$ .10
Service on	2.00
Copy	
	$2.10

19 And afterwards, to-wit on the 10th day of April, 1903, there was filed in said clerk's office a præcipe for appearance, which præcipe is in words and figures following, to-wit:—

In the United States Circuit Court, Southern District of Iowa.

THE GREENWICH INSURANCE CO. OF NEW York *et al.*, Plaintiff,
vs.
BERYL F. CARROLL, Auditor of State, Defendant.
} No. 2410. Equity. Præcipe for Appearance.

The clerk of said court will please enter my appearance for Byrel F. Carroll, auditor of state for the State of Iowa. Defendants in above cause.

(S'g'd) CHAS. W. MULLAN,
Solicitor for Def't.

The names of all defendants against whom default is claimed must be written in full.

(Endorsed:) U. S. circuit court, southern district of Iowa, No. 2410 Eq. The Greenwich Inst. Co. of New York *vs.* Beryl F. Carroll, auditor of state, Præcipe for appearance. Filed April 10, 1903. E. R. Mason, clerk.

20 And afterwards, to-wit on the 6th day of June, 1903, there was filed in said clerk's office, demurrer of the above named defendant, Beryl F. Carroll, to the bill of the complainants above named, which demurrer is in words and figures following, to-wit:—

21 In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

THE GREENWICH INSURANCE COMPANY OF NEW YORK, a Corporation Organized and Existing under the Laws of the State of New York, Having its Principal Place of Business in the City of New York, and Others, Complainants,
against
BERYL F. CARROLL, Auditor of State of the State of Iowa and Citizen of the State of Iowa, Defendant.
} In Equity.

Demurrer of the Above Named Defendant, Beryl F. Carroll, to the Bill of the Complainants Above Named.

Comes now this defendant, Beryl F. Carroll, by protestation, not confessing or asknowledging any of the matters or things contained in the bill of the above named complainants to be true is such manner or form as the same are set forth herein, and demurs to said

bill of complaint. And for causes of such demurrer respectfully shows to this court—

I. That it appears by the complainants' own showing by said bill, and upon the face thereof, that they are not entitled to the relief prayed in said bill against this defendant, for the reasons as follows:

II. That it affirmatively appears by said bill that all of the complainants named therein, and all other persons described
22 therein as being similarly situated as the complainants, and for whom relief is incidentally asked in said bill, are corporations foreign to the State of Iowa and organized and carrying on their business under the laws of other States of the United States than the State of Iowa, and under the laws of countries foreign to the United States. And said bill further affirmatively shows that all of said complainants and other persons referred to therein as being similarly situated are engaged in conducting, carrying on and transacting the business of fire insurance within the State of Iowa and within other States, Territories and foreign countries, and that the same constitute and are a natural class for legislative purposes; that the classification made by the legislature in the enactment of sections 1754, 1755, 1756 and 1857 of the Code is a natural and not an arbitrary classification, and that the provisions of said sections of the Code of the State of Iowa operate equally and uniformly upon every person and corporation in such natural class within the territorial jurisdiction of the State, and who is brought within the relations and circumstances specified in and affected by the provisions of said sections.

And it affirmatively appears by said bill and by the allegations thereof that the provisions of sections 1754 and 1755 of the Code are laws of a general nature and have a uniform operation, and that the same do not grant to any citizen or class of citizens privileges or immunities which in the same terms do not equally apply to all citizens; and affirmatively shows that the provisions of said sections do not infringe or violate section 6 of article I of the constitution of the State of Iowa, and that the same are not invalid for that reason.

23 III. That it affirmatively appears from the allegations of said bill that sections 1754, 1755, 1756, and 1757 of the Code of Iowa do not violate and infringe article XIV of the amendments to the Constitution of the United States, and do not deprive any person of life, liberty or property without due process of law, and do not deny to any person within the jurisdiction of Iowa equal protection under the laws of the State; and affirmatively shows that the power, given to the auditor by the sections of the code referred to, to revoke the right of the complainants to do business in the State of Iowa, can only be exercised by him upon a violation of a valid law of the State lawfully regulating the conduct of the business carried on by the complainants, and that the provisions of sections 1754, 1755, 1756 and 1757 of the Code of Iowa do not prevent

or abridge the right of complainants to make and carry out any lawful and legal contract connected with the transaction of their business within the State.

IV. That it affirmatively appears by the allegations of said bill that the provisions of sections 1754, 1755, 1756 and 1757 do not violate the provisions of section 10 of article I of the Constitution of the United States, and that the same do not in any wise impair the obligation of contracts or affect or interfere with any vested right of the complainants, or the other fire insurance companies for whom they sue; and affirmatively shows that the provisions of said sections are not invalid because repugnant to any provision of the Constitution of the United States.

And it further affirmatively appears by said bill that the sole object and purpose of the legislature of the State of Iowa enacting said sections of the code was to prevent an unlawful and illegal combination between corporations conducting the business of in-
24 suring property against loss or damage by fire within the State of Iowa, for the purpose of eliminating and preventing competition as between persons, companies, corporations and associations carrying on the business of fire insurance in the State of Iowa; and that the provisions of said law in nowise affect the legitimate and lawful business of persons, companies, corporations and associations transacting the business of fire insurance within the State of Iowa, nor prevent them from entering into and performing all legitimate contracts in any wise connected with the conduct of such business.

V. It further affirmatively appears by said bill that this court has no jurisdiction to hear and determine the questions presented by said bill, or to grant the relief asked therein; and this defendant objects and demurs to the jurisdiction of this court upon the following grounds:

First. That said bill affirmatively shows that the complainants have no claim of any kind or character against the defendant, and that there is no amount in value of money or property involved in any controversy between the complainants and the defendant, or in any wise involved in this action; and said bill further affirmatively shows that no question affecting the life or liberty of the complainants, or any other person or persons for whom they sue, is involved herein, and that upon the allegations of said bill, and from the nature of the case as stated therein, there can be no judgment for any sum or amount rendered herein in favor of the complainants and against the defendant, nor any relief granted to the complainants against the defendant necessary to give this court jurisdiction to hear and determine the questions presented by the bill.

Second. That it affirmatively appears from said bill that complainants have in nowise been injured in life, liberty or prop-
25 erty by the provisions of sections 1754, 1755, 1756 and 1757 of the Code, and that no attempt has been made by the defendant as auditor of state of the State of Iowa or otherwise to en-

force the provisions of said sections against complainants, and that this action is brought in the circuit court of the United States for the purpose of having a State statute declared invalid and to anticipate any acts of the officers of the State of Iowa charged with the enforcement of such statute when there has been no violation of such law by complainants and when the constitutionality and validity of said statute has not been drawn into controversy in any action or proceeding whatsoever between the complainants and the defendant, and at a time when no personal or property rights of any kind or character are in any wise involved in any controversy existing between the complainants and the defendant.

(S'g'd) CHAS. W. MULLAN,
Attorney General of the State of Iowa, Solicitor and of Counsel for Defendant, Beryl F. Carroll.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

(S'g'd) CHAS. W. MULLAN,
Of Counsel for Defendant.

(Endorsed:) Circuit court of the United States, southern dist. of Iowa, central division. The Greenwich Insurance Co. of New York *et al.*, complainants, *v.* Beryl F. Carroll, auditor of state of the State of Iowa, defendant. Demurrer of the above named defendant, Beryl F. Carroll, to the bill of the complainants above named. Filed June 6, 1903. E. R. Mason clerk. Charles W. Mullan, attorney general of Iowa.

26 And afterwards, to-wit, on the 26th day of September, 1903, there was filed in said clerk's office an order; which order is in words and figures following, to-wit:—

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

GREENWICH INSURANCE COMPANY ET AL.
vs.
BYREL F. CARROLL, State Auditor.
} No. 2410. Equity.

Order.

The complainants are given leave, without terms, to file an amendment to their bill in equity. The said amendment shall contain recitals of and concerning section 6 article 1, of the Iowa constitution, and wherein the Iowa statutes referred to in the bill are in conflict with said constitutional provision, as claimed by complainants.

The said amendment shall be filed within four days from this date, and shall be regarded as having been filed before defendant filed his demurrer.

And defendant's demurrer now on file shall be held to apply to said amendment as well as to the original bill.

Done at Des Moines, Iowa, September 26, 1903.

(S'g'd) SMITH McPHERSON, *Judge.*

27 SEPTEMBER 26, 1903.

The clerk will record the above order.

(S'g'd) SMITH McPHERSON, *Judge.*

(Endorsed:) Filed Sept. 26, 1903, E. R. Mason, clerk. Ent. T. 52.

28 And afterwards to-wit; on the 28th day of September, 1903, there was filed in said clerk's office an amendment to bill of complaint, which amendment is in words and figures following to-wit:—

In the United States Circuit Court in and for the Southern District of Iowa, Central Division.

GREENWICH INSURANCE CO. ET AL., Complainants, *vs.* BYREL F. CARROLL, Auditor of State of the State of Iowa, Defendant.	In Equity. Amendment to Bill of Complaint.

To the honorable the judges of the circuit court of the United States for the southern district of Iowa:

In pursuance of an order of the Honorable Smith McPherson, one of the judges of said court, made and entered herein on the 26th day of September, 1903, complainants amend their bill of complaint on file herein as follows:

Strike out of paragraph nine of said bill the words beginning with the word "first" in the eleventh line of said paragraph, and ending with the word "citizens" in the sixteenth line of said paragraph, and insert in lieu thereof the following:

First. For as much as section six of article one of the consti-
29 tution of the State of Iowa provides that "All laws of a general nature shall have uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens;" and for as much as section thirty of article three provides "Where a general law can be made applicable, all laws shall be general and of uniform operation through the State."

That section 1754 relates to matters where a general law could be made applicable and said law is not of uniform operation throughout the State.

Wherefore, your orators p-ay as in their original bill.

(S'g'd) CARR, HEWITT, PARKER & WRIGHT,
JAMES C. DAVIS,
Solicitors for Complainants.

(S'g'd) GEO. H. CARR, *Of Counsel.*

(Endorsed :) In U. S. circuit court, central division, southern district, of Iowa. Greenwich Ins. Co. *et al. vs.* Byrel F. Carroll aud. *et al.* Amendment to bill of complaint. Filed Sept. 28, / 03, E. R. Mason, clerk. Carr, Hewitt, Parker & Wright, attorneys for complainants.

30 And afterwards, to-wit :—on the 13th day of October 1903, there was filed in said clerk's office an opinion, which opinion is in words and figures following, to-wit :—

31 In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

THE GREENWICH INSURANCE COMPANY ET AL.
vs.
BYREL F. CARROLL, State Auditor. } No. 2410. Equity.

James C. Davis, and George H. Carr, for complainants.
Charles W. Mullan, attorney general, for defendant.

Opinion.

MCPHERSON, *J.:*

This case is pending on defendant's demurrer to a bill in equity, filed by a number of foreign fire insurance companies, against the defendant, who is auditor of the State, and insurance commissioner.

The bill asks that defendant be restrained from taking action against them, under certain statutes of the State, alleging that the statutes in question are void because in conflict with both the State and Federal Constitutions. It is alleged that all these companies have been engaged in doing a fire insurance business in the State for a great many years, paying the fees and taxes, and in all respects complying with the laws relating to such companies. And it is also alleged that prior to the adoption of the statutes in question, that they had established their business in equipping offices, paying out large sums in advertising and so on. And from year to year,

32 including the current year, they having fully complied with the laws of the State in making their reports as well as all

other things, and the auditor gave each of them a certificate authorizing them to continue in business, they each have an extensive business in Iowa, carrying large and numerous risks on property in the State.

It is alleged that there are eighty-five foreign companies, including complainants, doing business in the State, and which pay to the State annually large sums as fees and taxes.

The statutes complained of were enacted in the year 1896, and are now parts of the code, being as follows:

Section 1754, provides that it shall be unlawful for two or more fire insurance companies doing business in this State, or for the officers, agents, or employés to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amounts of commissions to be allowed agents for procuring the same, or the manner of transacting fire insurance in this State. Penalties and fines are to be imposed for a violation of the statute.

Section 1755, provides that the auditor shall summon before him and examine under oath all those he suspects of violating the statute. And if they fail to appear, or if he finds that they are doing the things inhibited, he shall revoke their permits to do business, and thereafter they shall not do business in the State.

It is alleged that the auditor is about to proceed against them, and that he will oust them from the State unless he is restrained.

The first question presented is; are the statutes in conflict with the State constitution?

33 Section 6, of article I, provides that all laws of a general nature shall have uniform operation, and that privileges and immunities which shall not on the same terms be granted to all.

Section 30 of article III, provides; "that where a general law "can be made applicable, all laws shall be general and of uniform "operation throughout the State."

The question was fully discussed in all its phases in the case of State *vs.* Garbroski, 111 Iowa 496. The statute under discussion provided that peddlers plying their vocation outside of a city or town, should pay a license or tax, *but* that a person who had served in the civil war need not pay the fee. The statute was held unconstitutional.

It is apparent to all that the statute involved in that case is not akin to the statutes now before the court.

Judge Ladd in the Garbroski case reviews many, if not all the cases upon the subject, and one need not look further for the correct rule, or for the authorities, than his admirable opinion in the Garbroski case.

All laws of a general nature shall have a uniform operation.

These laws in question do have a uniform operation. No one can expect that *all* laws, shall operate upon *all* people. We have laws with reference to the legislature, and those laws operate upon that body alone. So as to the office of the auditor, and a score of other offices, State, county and municipal. And it is the same as to

private affairs. Railroad companies are held liable for an injury to an employé brought about by the negligence of a fellow servant. Such legislation, as all know, is valid.

Hundreds of statutes have been enacted in this State known by all to be intended to apply in each case to a single city, or town,
34 corporation or trade. That they are valid, but few doubt.

Statutes were enacted many years ago applying to bridges across the Mississippi river when there was but one bridge, and now there are but few. No one doubts their validity.

Years ago statutes were passed authorizing the sale of a railroad to one at the State line, to thereby make a connecting line. But few, if any, ever doubted their validity.

Illustrations will readily occur, by which I could multiply these cases. And so it is as to granting immunities to some, which are denied to others. Exempting farmers, merchants, manufacturers, mining companies and other corporations from liability in case an employé is injured by another employé's negligence, and holding a railroad liable, well illustrates the whole proposition.

Classifications can be made, providing they are not arbitrarily made.

If the Iowa statute provided that a railroad company were liable in the case above stated, where an employé was injured in building a bridge, cutting timber, or at work in the shops, all the courts would have held the law invalid. But the legislature provided for a recovery only when the injury occurred in the hazards arising from the use and operation of the road. If these statutes in question are otherwise valid, then it is not an arbitrary classification, because they apply to a business peculiar in itself.

All will agree that there must be rules and regulations applicable to insurance companies, not applicable to other corporations. There must be some officer, with the powers of an insurance commissioner, to govern and direct, and control them.

The Iowa supreme court has upheld so many statutes in
35 principle like this, that the question now being discussed seems very clear to me. The following statutes have been held valid;

1. Innumerable curative and legallizing acts.
2. Statutes making railway companies liable for double damages for stock killed.
3. Allowing a defendant a continuance, as of course, when in the military service.
4. Classifying railroads as to charges for carrying freights and passengers.
5. Taxes need not operate upon all persons alike.
6. Taxing railroads by one set of officers, and individuals by another.
7. Exempting property from water taxes.
8. Taxing foreign insurance companies on their business.

9. Exempting certain property from municipal taxes, and compelling others to pay such taxes.

10. Taxing transient merchants.

11. Assessing stock of State bank differently from that of a national bank.

12. A special law authorizing the building of a particular railroad.

No doubt there are others that have been upheld.

Counsel for complainant seem to have forgotten, that special legislation in all cases is not prohibited. Special legislation is prohibited as to six enumerated subjects.

1. Assessment and collection of taxes.
2. For laying out highways.
3. For changing the names of persons.
4. For incorporating cities and towns.
5. For vacating roads, streets and town plats.
6. For locating or changing county seats.

But as no one of the above referred to provisions of the
36 constitutions is applicable to this case, it is necessary to see what other special legislation is prohibited. The constitution then recites;

"In all cases above -numerated, and in all other cases where a "general law can be made applicable, all laws shall be general and "of uniform operation throughout the State."

It is too apparent to admit of discussion, that there are hundreds of subjects upon which the State through its legislature should speak;

"Where a general law can *not* be made applicable, and where it "can *not* be of uniform operation throughout the State."

And insurance is one of these subjects.

In my judgment the statutes in question, are not prohibited by either of the State constitutional provisions.

Chapter 4, title 9, of the Iowa Code, which chapter includes the statutes now under consideration, affirmatively make- two, among other things appear:

1st. That it is the policy of this State to invite solvent and reliable foreign insurance companies to come into this State, particularly for the purpose of giving the people the benefit of competition, and partly for the purpose of obtaining revenue for the State treasury. And both purposes are subserved.

2nd. That it is the duty of the State auditor to license such companies to do business in the State, if upon investigaton he finds them solvent and financially worthy. Such being the policy of the State, and such being the duty of the auditor, he cannot deny the foreign companies of the kind above described, from receiving the proper certificate and from doing an Iowa business.

Should he undertake to keep such a company out, the proper court will by mandamus compel him to grant the authority, and

admit such company. This being so *he* cannot put them out,
37 after they are once lawfully and rightfully in, excepting by virtue of the power lodged with him under a valid and constitutional statute.

What was said by the chief justice in the case of R. R. *vs.* State, 31 N. J. Law 531, *543*, although in a tax case, is pertinent:

"It is not denied that the corporate existence of a company is recognized, not by right but by grace, in foreign jurisdictions, nor that each government has the competence to refuse to recognize such existence, except on its own conditions. The principle is universally acknowledged. Hence, laws requiring insurance companies and other foreign corporations to file bonds and submit to other exactions, as a prerequisite to their admission in an incorporated capacity, into the State. Such laws when rightfully made, are evidently mere police regulations, designed to protect the citizens of the State in which they are enacted from loss or imposition, and on this ground their legality cannot be drawn in question. But a tax law, having revenue for its object, is based upon a principle entirely different. The right to tax for revenue is the right of the Government to take so much of the property of the person or company on whom the tax falls, as such government may deem necessary for its public wants. The act of taking the property, therefore, must of necessity be an acknowledgement of the legal status of the person or company whose property is taken. To assert that the company whose property is thus taken has no rights but such as the government taking it chooses to confer, is to assert that such company has no title to its property but such as may be conceded to it by the taxing power. It seems to be utterly inconsistent with legal principles, which have always been deemed axiomatic, to hold that a government can recognize the legal existence of a foreign corporation for the purpose of taxation, and at the same time can deny such legal existence for the purpose of depriving it of those rights which belong to every individual or company known to the law. Such a doctrine would, obviously, offer the entire property of foreign corporations as a prize to the rapacity of any State in whose territories it might be, or over which it might happen to be carried. It is readily to be admitted that a law imposing certain terms upon all foreign corporations as conditions precedent to their acquisition in this State, of the right to act in the unity of their corporate existence, would be legal. Such law would prevent foreign persons from doing any legal act in this State as a corporation but can it be maintained that such a law would have the further effect of leaving the property of the company as a spoil of the first taker?"

These companies have the requisite capital, being solvent, having paid their taxes, and license fees, and having done all the things required of them by the laws of Iowa, and the exactions of the auditor, having been invited to do business in the State, and being
38 now rightfully here, they for the time being, and until the policy of the State is changed, have the rights, neither more

nor less than the Iowa companies enjoy. And illegal exactions can not be made upon them.

In Insurance Company *vs.* Morse, 20 Wallace 445, the Supreme Court held a statute to be void which required a foreign company to agree not to remove a case to the Federal courts.

But in Doyle *vs.* Insurance Co., 94 U. S. 535, the Supreme Court recognized the right of a State to oust the company if it did remove its cases to the Federal courts. It so held, not because such removals were a good reason for ousting the companies, but because the State had the right to exclude them without reference to the reason.

But that is not the question now being considered. It is not a question of keeping a foreign company out. The question is shall *all* companies, foreign and domestic, now rightfully in the State be compelled to submit to the exactions of an invalid and unconstitutional statute?

It is quite certain that an Iowa corporation cannot by any legislation be ousted or dissolved by reason of invoking the Federal Constitution. And if the Iowa legislature should ever be persuaded that the better way to prevent monopolies as between foreign companies, is to create a monopoly by giving all the business to Iowa companies, it can easily be done. Let there be a legislative declaration to the effect, that the local companies may do as they see fit if they stay inside the constitution, but that foreign companies must quit the State if they hold up the Federal Constitution as their shield. It is scarcely possible that such a position will ever be taken. But Wisconsin once did. And if Iowa ever does, then and not until then will the Doyle case become binding as to Iowa legislation.

The distinct policy of Iowa for many years has been to invite foreign insurance companies into the State. They have
39 been imposed with some burdens, not imposed upon home companies. And that this is allowable, no one denies. That they can be wholly excluded, no one denies. But for the obvious reasons of competition for the benefit of people needing insurance, and for monies for the State treasury, the State for years has said that they may come, and may remain in. And yet the attorney general now contends that in the face of such policy, that this court by construction and implication, shall say that such foreign companies shall be punished for seeking the benefits of the Federal Constitution.

It must be kept in mind that the statutes in question do not apply alone to foreign companies. Those laws, if valid, apply to *all* companies. This bill in equity is filed by the complainants for the use and benefit of *all* companies.

It is not at all necessary in this case, to make allegations of diverse citizenship. There are such allegations, but they are unnecessary allegations in this case. Home companies could be joined as plaintiffs in this action. Not only one question, but the principal con-

troversy herein, is a Federal question. The court takes jurisdiction because of that question, regardless of citizenship, and will retain jurisdiction over all questions in the case, including questions that are not Federal, regardless of the citizenship of the parties.

See opinion of Judge Brewer, in Omaha Company *vs.* Cable Company, 32 Fed. Rep. 727, and cases cited.

But it is argued that there is a remedy at law.

A court of equity has the power, and it is likewise its duty, to enjoin the enforcement of an unconstitutional statute, when such enforcement would subject the party to innumerable prosecutions, and particularly when such prosecutions would pending litigation work great hardships, and wrongs and damages.

The recent decision of the circuit court of appeals for this circuit in the case of City of Hutchison *vs.* Beckham, 118 Fed. Rep.
40 399, is an authority, and of binding force upon this court. It puts at rest the question as to the jurisdictional amount involved. It also puts at rest the duty and the power of a court of equity to enjoin the enforcement of an invalid law, when prosecution would be followed with loss of business, expense and hardships. And it also holds that the fact, that the party could resist the enforcement of such invalid law, by a defence to proceedings in the State court, does not prevent a court of equity, State or Federal from taking jurisdiction. A State statute can neither enlarge nor curtail the equity jurisdiction of this court. And it will not do to say, that because a law is unconstitutional, and because all are conclusively presumed to know the law, that there need be no fear, that the officer who is commanded to act under the statute, will attempt to enforce it. It is the duty of the State auditor to enforce the statute, if it is a valid statute, and he no doubt feels, that it is not incumbent upon him to pass upon its validity, but will recognize it as of force until it is otherwise held by the courts.

And it is alleged in the bill before me, that the State auditor will enforce the statute, if not restrained by the progress of a court. In the light of such declarations, and the presumptions that he will attempt to enforce the statute, the case of Osborne *vs.* United States. 9 Wheaton, 738, must be regarded as an authority.

And the reasons given by Chief Justice Marshal in the opinion in that case as to why Osborne the State auditor of Ohio, should not be allowed to enforce a statute of that State, are equally applicable to Mr. Carroll, the auditor of Iowa, if the statute in question is invalid.

In the Doyle case (94 U. S. 535), the statute of Wisconsin specifically provided, that if any foreign company should remove a case to the Federal court, that the State officer should under an imperative duty, recall and revoke the license of such foreign
41 company to do business in the State.

But in the case at bar, foreign and domestic companies are placed on an exact equality. And the statute does not say that if

the foreign companies, shall invoke the Federal Constitution, that such a wrong has thereby been done, that the State auditor can punish it, by removing it from the State.

But in the case at bar, the statute if applicable, and if enforced, will be made to read in effect, that any insurance company domestic as well as foreign, shall not dare to look further than the Iowa laws, and that they shall not at the peril of their existence in this State, dare to claim any right under "the supreme law of the land."

This to me is not comity between the States, but subordinates the nation to a petty position that it has not occupied for many years.

The statute in question provides that two or more companies shall not do any of the following things:

A. Make or enter into any combination or agreement relating to the rates to be charged for insurance.

B. Agree as to the amount of commissions to be allowed agents for procuring the same.

C. Agree as to the manner of transacting the fire insurance business in the State.

The first, I shall not discuss. But as to the second and third propositions, I have no doubt but that the statute is beyond the power of legislation, and will give my reasons;

As was held in Hooper *vs.* California, 155 U. S. 648, and cases cited, insurance is not commerce. Therefore the many cases cited by the attorney general, arising under the "commerce clause" are not in point. They are irrelevant, and do not have the slightest application. The commerce cases were so decided, because
42 all parts of the constitution applicable, must be construed together. And so the Supreme Court has within the last few years in the Addystone Pipe case, and Traffic Association cases, and the circuit judges in the Northern Securities case, made it plain to every one, that if the question is one of commerce between the States, then the right and liberty of contract must in a measure yield. That is to say, Congress shall have the right to regulate commerce between the States, even though the freedom of contract is curtailed. If this were not so, then the commerce clause would be subordinated to other provisions of the Constitution. The two provisions of the Constitution must be construed together.

There is another class of cases, numerous in number, sound in principle, but which in my judgment have no application to the question now being considered. I refer to cases arising under the police power of the States. Such a case is that of Holden *vs.* Hardy, 169 U. S. 366. The State statute inhibited the employment of a person for more than eight hours a day in underground mines.

The Supreme Court held the statute a valid exercise of the police powers, as protecting the life and health of individuals and that the same could not be contracted away.

No one denies that insurance is a legitimate business, and one that is necessary to the welfare of all people who cannot afford to carry their property without such guaranty against loss. To carry on the

business, calls for the services of men of affairs and experience. Men must be employed, and that requires contracts. Re-insurance is often required, and that calls for contracts between two or more companies. Adjusters are necessary and one such person must, or often does, act for several companies. One risk oftentimes
43 must be apportioned between several companies. Companies must charge reasonable rates, and in some States can be compelled to pay the face of the policy. What are reasonable rates, and how are such rates determined? No doubt partly from the history and statistics of the business, and partly from current experience. One risk is more hazardous than another, and rates must vary. Telephone wiring may, or may not increase the risk. Electric lighting with or without "cut-offs" or "step-downs," may or may not increase the risk. Experiments, and experience and statistics may show, or differences of opinion may exist. Some risks are greater in the summer and others in the winter. The salary of officers is one item of the costs. The commissions of the solicitors have much to do with it. In short the business cannot be carried on for a day without making contracts, not alone with the insured, but with other companies and with persons *explayed* by other companies.

The Attorney General seeking to avoid the force and weight of the authorities, leaves but little for argument, when he concedes in his two briefs as follows:

"It is urged that the act of the legislature is unconstitutional be-
"cause it takes from the fire insurance companies doing business
"within the State the right of contract, which is one of the liberties
"guaranteed by the fourteenth amendment.

"The conclusive answer to that contention is that the statute
"does not take away from any insurance company transacting busi-
"ness within the State the right to contract with any person or cor-
"poration desiring to enter into any lawful contract with such com-
"pany, nor does it in any manner abridge the right to make such
"lawful contract."

"The sole purpose of the statute, and the end sought to be accom-
"plished by its enactment, is to prevent fire insurance companies
"from entering into a contract or combination whereby their rights
"to enter into lawful contracts with those desiring fire insurance is
"abridged and restrained.

"It is conceded at the outset that any act of the legislature, which
"restricts or abridges the liberty of contract guaranteed by sec-
"tion I, of the fourteenth amendment to the Federal Constitution, is valid."

That the authorities cannot be reconciled, is known by
44 all. For instance, statutes quite identical in language, meaning, and purpose, were before the courts in Holden *vs.* Hardy, *supre*, and in *Ex parte* Morgan 58 Pacific Rep. 1071 (Colorado), and the one decision is squarely against the other. Practically nothing is left to be said on either side, after reading the two

opinions. But in those cases, the contracts inhibited, were by reason of statutes to protect the health of individuals for whose benefit the laws were enacted.

Then again the subject is exhaustively treated by Mr. F. N. Judson, in a paper "Liberty of contract under the police power," before the American Bar Association in 1891. (See reports Am. Bar. Ass'n for that year, vol. 14 page 231.)

There are three recent cases, which cover the entire question and which come so near citing all the authorities, that one need look but little further for the authorities upon the subject.

People *vs.* Orange County — N. E. Rep. (N. Y.) page —.
Republic Co. *vs.* State, 66 N. E. Rep. (Indiana) 1006.
State *vs.* Kreutzberg, 90 N. W. Rep. (Wisconsin) 1098.

These cases are not cited as involving inhibited contracts, like the ones prohibited by the Iowa statutes, but they are cited as being in principle much the same, and because of the exhaustive discussion of the question. And the fact that the law assailed is what is known as an "anti-trust law" does not take it out from under the Federal Constitution.

In *re* Grice 79 Fed. Rep. 627.
Connolly *vs.* Sewer Pipe, 184 U. S. 540.

As against those cases see State *vs.* Monnett, 61 Ohio State 520.
Cleland *vs.* Anderson, 92 N. W. Rep. (Nebraska) 306.

But it becomes academic, and mere common place, to undertake to write what this court, or that court has said on the ques-
45 tion. Law is not an exact science, as is illustrated by the cases arising under the fourteenth amendment, perhaps more than by any of the other debatable legal questions. The "liberty" of the Constitution has been defined, and it will continue to be defined by some as the right of an individual to keep out of prison, excepting for crime committed. Others will define "liberty" as also including the right to earn a livelihood, acquire property, perform services for another, employ others, make contracts not tainted with an illegal or immoral consideration, and those not injurious to the health or welfare of people. I prefer the latter definition.

Within the meaning of the Constitution, as has been held many times by the Supreme Court a "corporation" is a "person." A corporation has the same rights to agree or contract within the scope of its powers, as has a person.

Can it be possible that legislation like that now presented to the court is valid?

If it is valid, then what becomes of the provisions "No man shall be deprived of equal protection of the law," or of that other provision, "No man shall be deprived of life, liberty, or property without due process of law?" Justice Field once said:

"The right to pursue them without let or hindrence is "a dis-

"tinguished privilege of the citizens of the United States, and an "essential element of that freedom which is their birthright."

Another justice of the United States Supreme Court said:

"Yet the power does not and cannot extend to prohibiting a "citizen from making contracts, and this is institutional law in Eng-
"land as well as America."

46 Another great judge has said:

"Liberty includes the right to acquire property, and that "means and includes the right to make and enforce contracts."

And I dare say that there is not an appellate court in this Union but has given a like definition of liberty—;

"The right to make and enforce contracts."

When the right of contract ceases, the right to do business is at an end. The right to purchase, hold, or sell, property must depend upon contract, and without contracts, business affairs cannot be carried on for a single day. And the slightest knowledge of insurance will persuade anyone, that companies both home and foreign, must have some arrangements, and must make some contracts with other companies. Farmers, merchants, laboring men, railway companies, and all other classes of both men and associations must do the same, and both the laws and Constitution permit it. And to single out insurance companies and say thay shall not, is not lagical, and in my judgment not allowable under the fourteenth amendment.

Employers of labor agree what they will pay, and laboring men agree for what sum they will work. Buyers and vendors of live stock, grain, groceries, clothing, anything and everything make their agreements. Farmers will and do agree as to the price for which they will sell, and what they will pay for labor, but this statute says that insurance companies shall agree as to none of these things.

Of course I do not hold, that insurance companies can combine and thereby enter into a conspiracy to accomplish any desired purpose. But no such question is involved in this case. I am only holding that insurance companies may make the usual con-

47 tracts that all other persons and corporations may make, which the statute seeks to take from them, and which will be taken from them if the statute in question is upheld.

My conclusions are that the statute in question is invalid for the reasons stated, and that the State auditor cannot enforce its provisions.

The demurrer will be overruled and the defendant allowed to file a plea or answer as he may deem best.

Des Moines, Iowa, October 19, 1903.

(Endorsed:) Filed October 13 1903. E. R. Mason, clerk.

48 And afterwards, to-wit, on the 19th day of October, 1903, there was filed in said clerk's office, an order, which order is in words and figures following, to-wit:—

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

THE GREENWICH INSURANCE COMPANY ET AL.
vs.
BYREL F. CARROLL, State Auditor.
} No. 2410. Equity.

Order.

For the reasons given in an opinion this day filed herein the demurrer of defendant to complainants' bill in equity is overruled, and defendant excepts.

If defendant elects to plead further, he shall by the December 1903 rule day file a plea or answer, or both, as he may be advised.

Done this October 19th 1903.

(S'g'd) SMITH McPHERSON, *Judge.*

OCTOBER 19TH, 1903.

The clerk will enter the above order of record.

(S'g'd) SMITH McPHERSON, *Judge.*

49 (Endorsed:) Greenwich Ins. Co. *vs.* Byrel F. Carroll, St. audtr. Filed Oct. 19, 1903, E. R. Mason, clerk. T. 53.

50 And afterwards, to-wit;—on the 7th day of March, 1904, there was filed in said clerk's office a decree, which decree is in words and figures following to-wit;—

In the Circuit Court of the United States in and for the Southern District of Iowa, Central Division, at Des Moines.

THE GREENWICH INSURANCE COMPANY OF NEW YORK, a Corporation Organized and Existing under the Laws of the State of New York, Having its Principal Place of Business in the City of New York, and a Citizen of New York;
The Insurance Company of North America, of Philadelphia, a Corporation Organized and Existing under the Laws of the State of Pennsylvania, Having its Principal Place of Business in the City of Philadelphia, and a Citizen of Pennsylvania;
The Hanover Fire Insurance Company of New York, a Corporation Organized and Existing under the Laws of the State of New York, Having its Principal Place of Business in the City of New York, and a Citizen of New York;
National Fire Insurance Company of Hartford, a Corporation Organized and Existing under the Laws of the State of Connecticut, Having its Principal Place of Business in the City of Hartford, and a Citizen of the State of Connecticut;

Orient Insurance Company of Hartford, a Corporation Organized and Existing under the Laws of the State of Connecticut, Having its Principal Place of Business in the City of Hartford, and a Citizen of the State of Connecticut;

British American Insurance Company of New York, Organized and Existing under the Laws of the State of New York, Having its Principal Place of Business in the City of New York, and a Citizen of the State of New York;

Manchester Assurance Company of Manchester, England, a Corporation Organized and Existing under the Laws of Great Britain, Having its Principal Place of Business in the City of Manchester, and a Citizen of Great Britain;

51 Sun Insurance Office of London, a Corporation Organized and Existing under the Laws of Great Britain, Having its Principal Place of Business in the City of London, and a Citizen of Great Britain;

London & Lancashire Fire Insurance Company, a Corporation Organized and Existing under the Laws of Great Britain, Having its Principal Place of Business in the City of London, and a Citizen of Great Britain;

Western Assurance Company of Toronto, a Corporation Organized and Existing under the Laws of the Dominion of Canada, Having its Principal Place of Business in the City of Toronto, and a Citizen of the Dominion of Canada;

British America Assurance Company of Toronto, a Corporation Organized and Existing under the Laws of the Dominion of Canada, Having its Principal Place of Business in the City of Toronto, and a Citizen of the Dominion of Canada;

Suing on Their Own Behalf and on Behalf of All Other Fire Insurance Companies Similarly Situated Who May Come in and Contribute to the Expenses of This Suit, Complainants,

vs.

BERYL F. CARROLL, Auditor of the State of Iowa, a Citizen of the State of Iowa, Defendant.

Decree.

This day this cause came on for hearing, the complainants, The Greenwich Insurance Company of New York; The Insurance Company of North America, of Philadelphia; The Hanover Fire Insurance Company of New York; National Fire Insurance Company of Hartford; Orient Insurance Company of Hartford; British American Insurance Company of New York; Manchester Assurance Company of Manchester, England; Sun Insurance Office of London; London & Lancashire Fire Insurance Company; Western Assurance Company of Toronto, and British America Assurance Company of Toronto, and each of them, appearing by Carr, Hewitt, Parker & Wright and James C.

Davis, their attorneys, and the defendant, Beryl F. Carroll,
52 auditor of the State of Iowa, appearing by Charles W. Mullan, attorney general of the State of Iowa, and the cause having been heretofore set down for hearing, at a former term of this honorable court, on the demurrer of said Beryl F. Carroll, auditor of the State of Iowa, to the original and amended bill of complaint, and the same having been fully argued by counsel for the complainants, as well as for the defendant, respectively, was taken under advisement by the court, and the court, now being fully advised in the premises, orders, decrees, and adjudges that the said demurrer be and the same is hereby overruled, and the defendant, Beryl F. Carroll, auditor of the State of Iowa, then and there by his counsel, in open court, having declined to further plead or answer to said original bill and amended bill of the complainants, and having elected to stand upon his said demurrer, and refusing to plead further, it is now ordered and decreed by the court that the complainants are entitled to the relief prayed for in said original and amended bill of complaint.

It is, therefore, ordered, considered, decreed, and adjudged by this court that the defendant, Beryl F. Carroll, auditor of the State of Iowa, and his successors in office be perpetually enjoined from enforcing as against the complainants, to-wit, The Greenwich Insurance Company of New York; The Insurance Company of North America; of Philadelphia; The Hanover Fire Insurance Company of New York; National Fire Insurance Company of Hartford; Orient Insurance Company of Hartford; British American Insurance Company of New York; Manchester Assurance Company of Manchester, England; Sun Insurance Office of London; London & Lancashire Fire Insurance Company; Western Assurance Company of Toronto, and British America Assurance Company of Toronto, and each of them, the provisions of sections 1754, 1755 and 1756 of the Code of Iowa of 1897, such sections
53 being sections 1, 2, and 3, of chapter 22 of the Acts of the 26th General Assembly; that the said Beryl F. Carroll, as auditor of the State of Iowa, and his successors in office, be and they are hereby enjoined from in any manner calling or bringing before them for examination under oath any officer, agent, or employé of any of the said complainants herein named, for any alleged violations of the provisions of said sections 1754, 1755, and 1756 of the Code of Iowa of 1897, and further that the said Beryl F. Carroll, as auditor of the State of Iowa, and his successors in office, be enjoined from entertaining any complaint made to them in writing, or otherwise, charging any of the complainants herein named with violation of section 1754 of the Code of Iowa of 1897, and that the said Beryl F. Carroll, as auditor of the State of Iowa, and his successors in office, be further enjoined and restrained from issuing any order revoking the authority of any of said companies for transacting business within the State of Iowa, or in any wise interfering with any such complainant company in doing business in the State of Iowa,

because of any alleged violation of the provisions of said section 1754 of the Code of Iowa of 1897.

It is further ordered, considered, and adjudged by the court that the said defendant, Beryl F. Carroll, as auditor of the State of Iowa, be required to pay the costs of this proceeding, taxed at $—, and that execution may issue therefor.

To which judgment, order and decree the said defendant, Beryl F. Carroll, as auditor of the State of Iowa, at the time duly excepted.

March 7th, 1904.

(S'g'd) SMITH McPHERSON, *Judge.*

54 The clerk will enter the above decree.

(S'g'd) SMITH McPHERSON, *Judge.*

(Endorsed:) The Greenwich Insurance Co., *at al.*, complainants, *vs.* Beryl F. Carroll, auditor of the State of Iowa, defendant. Decree. Filed March 7, 1904, E. R. Mason, clerk. T. 77.

55 And afterwards to-wit:—on the 21st day of April, 1904, there was filed in said clerk's office a petition for appeal to the Supreme Court of the United States, which petition is in words and figures following to-wit:

Petition for Appeal to the Supreme Court of the United States.

In the Circuit Court of the United States for the Southern District of Iowa.

THE GREENWICH INSURANCE COMPANY OF NEW YORK and Others, Complainants,
v.
BERYL F. CARROLL, Auditor of State of the State of Iowa, Defendant.

The above named defendant, conceiving himself aggrieved by the decree made and entered by the circuit court of the United States for the southern district of Iowa, on the seventh day of March, 1904, in the above entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith; and prays that this appeal may be allowed and that a transcript
56 of the record, proceedings and papers upon which such order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

(S'g'd) CHAS. W. MULLAN,
Attorney General of Iowa, Attorney for Defendant.

Dated this nineteenth day of April, A. D. 1904.

The said appeal as prayed is allowed this April 25, 1904.
(S'g'd) SMITH McPHERSON, *Judge.*

57 And on the same day, to wit;—April 21 1904, there was filed in said clerk's office an assignment of errors, which assignment is in words and figures following, to-wit;—

Assignment of Errors on Appeal from the Circuit Court to the Supreme Court of the United States.

In the Circuit Court of the United States for the Southern District of Iowa.

THE GREENWICH INSURANCE COMPANY and Others, Complainants,
v.
BERYL F. CARROLL, Auditor of State of the State of Iowa, Defendant. } No. —.

The above named defendant prays an appeal from the final decree of this court to the Supreme Court of the United States, and assigns for error;

First. That the court erred in overruling the demurrer to complainant's bill, and in not dismissing the bill.

58 *Second.* The court erred in perpetually enjoining the defendant Beryl F. Carroll, auditor of state of the State of Iowa, and his successors in office, from enforcing against the complainants, and each of them, the provisions of sections 1754, 1755 and 1756 of the Code of Iowa, and in enjoining and restraining the said defendant, Beryl F. Carroll, auditor of state of the State of Iowa, and his successors in office, from in any manner calling or bringing before him or them for examination under oath any officer, agent or employee of said complainants, or either of them, for any alleged violation of the provisions of said sections 1754, 1755 and 1756 of the Code of Iowa.

Third. The court erred in enjoining and restraining the said Beryl F. Carroll, auditor of state of the State of Iowa, defendant herein, and his successors in office, from entertaining any complaint made to him or them, in writing or otherwise, charging any of the complainants with a violation of section 1754 of the Code of Iowa.

Fourth. The court erred in enjoining and restraining the said defendant, Beryl F. Carroll, auditor of state of the State of Iowa, and his successors in office, from issuing any order revoking the authority of any of the complainants for transacting the business of insurance within the State of Iowa, and from in anywise interfering with such complainants in doing business in the State of Iowa, because of any alleged violation of the provisions of said section 1754 of the Code of Iowa.

Fifth. The court erred in holding and adjudging that the provisions of sections 1754 and 1755 of the Code of Iowa violate and infringe the provisions of the constitution of the State of Iowa, and the provisions of section 6 of article I thereof, and in hold-
59 ing that said law is not uniform in its operation, and that thereby privileges and immunities are granted to citizens of the State of Iowa other than fire insurance companies transacting business therein, which are withheld from complainants.

Sixth. The court erred in holding that the provisions of sections 1754, 1755, 1756 and 1757 of the Code of Iowa violate and infringe article XIV of the amendments to the Constitution of the United States, and deprive the complainants of liberty, property and property rights without due process of law, and deny to said complainants the equal protection of the laws of the State of Iowa.

Seventh. The court erred in holding that the provisions of sections 1754, 1755, 1756 and 1757 of the Code of Iowa violate and infringe section 10 of article I of the Constitution of the United States, and impair the obligation of contracts.

Eighth. The court erred in holding that it had jurisdiction to hear and determine the questions presented by the bill, and to grant the relief asked therein.

Ninth. The court erred in assuming jurisdiction of the complainants and the defendant herein, and of the subject matter involved, when the constitutionality and validity of the State statute involved in this action had not been drawn into controversy in any action or proceeding whatever between the complainants and the defendant, and no personal or property rights of any kind or character were in anywise involved in any controversy existing between the complainants and the defendant.

Tenth. The court erred in adjudging that the defendant, Beryl F. Carroll, auditor of state of the State of Iowa, be required to pay the cost of this proceeding, and in entering judgment therefor and ordering execution to issue thereon.

60 Wherefore defendant prays that the decree of the said circuit court be reversed.

(S'g'd) CHAS. W. MULLAN,
Attorney General of Iowa, Attorney for Defendant.

(Endorsed:) U. S. circuit court, southern district of Iowa. The Greenwich Insurance Co. of New York, and others, complainants, *v.* Beryl F. Carroll, auditor of state of the State of Iowa, defendant. Petition for appeal and assignment of errors. Filed April 21, 1904. E. R. Mason, clerk. Chas. W. Mullan, attorney general of Iowa, att'y for def't.

61 And afterwards, to-wit;—on the 26th day of April, 1904, there was filed in said clerk's office an appeal bond, which bond is in words and figures following to-wit;—

62 *Appeal Bond.*

Know all men by these presents, That we, Beryl F. Carroll, as principal, and G. S. Gilbertson and D. J. Palmer as sureties, are held firmly bound unto the Greenwich Insurance Company of New York, The Insurance Company of North America, of Philadelphia, The Hanover Fire Insurance Company of New York, National Fire Insurance Company of Hartford, Orient Insurance Company of Hartford, British-American Insurance Company of New York, Manchester Assurance Company of Manchester, England, Sun Insurance Office of London, London & Lancashire Fire Insurance Company, Western Assurance Company of Toronto and British American Assurance Company of Toronto, in the full and just sum of two hundred and fifty dollars, to be paid to the said Greenwich Insurance Company of New York and the other obligees of this bond herein named, their certain attorneys, executors, administrators or assigns, to the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this twenty-second day of April A. D. in the year of our Lord one thousand nine hundred and four.

Whereas lately at a circuit court for the seventh day of March, A. D. 1904, in a suit depending in said court, between the said Greenwich Insurance Company of New York and the other obligees of this bond above named, as complainants, and Beryl F. Carroll, as defendant, a decree was rendered against the said *the said* Beryl F. Carroll, and the said Beryl F. Carroll having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Greenwich Insurance Company, of New York and the other obli-
63 gees of this bond, citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington on the second Monday in October, A. D. 1904.

Now, the condition of the above obligation is such that if the said Beryl F. Carroll shall prosecute his appeal to effect and answer all damage and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(S'g'd) B. F. CARROLL, *Principal.*
G. S. GILBERTSON, *Surety.*
D. J. PALMER, *Surety.*

Sealed and delivered in the presence of

(S'g'd) WM. M. LEWIS.
Z. A. WILLIS.

The above and foregoing bond is approved this April 25th 1904.

(S'g'd) SMITH McPHERSON, *Judge.*

(Endorsed:) U. S. circuit court, southern district of Iowa. Greenwich Insurance Co. of New York, and others, complainants, *v.* Beryl F. Carroll, auditor of state of the State of Iowa, defendant Appeal bond. Filed April 26, 1904. E. R. Mason, clerk.

64 And afterwards, to-wit;—on the 6th day of May, 1904, there was filed in said clerk's office a citation, which citation is in words and figures, following, to-wit;—

65 *Citation.*

THE UNITED STATES OF AMERICA, ss:

The President of the United States to The Greenwich Insurance Company of New York, The Insurance Company of North America, of Philadelphia; The Hanover Fire Insurance Company of New York, National Fire Insurance Company of Hartford, Orient Insurance Company of Hartford, British-American Insurance Company of New York, Manchester Assurance Company of Manchester, England; Sun Insurance Office of London, London & Lancashire Fire Insurance Company, Western Assurance Company of Toronto, and British American Assurance Company of Toronto, Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States at the city of Washington within thirty days from the date of this writ, pursuant to an appeal duly allowed by the circuit court for the southern district of Iowa, filed in the clerk's office of said court on the 21st day of April, A. D. 1904, in a case wherein Beryl F. Carroll is appellant and you are appellees, to show cause, if any, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Smith McPherson, judge of the United States district court for the southern district of Iowa, sitting and acting as judge of the circuit court of the United States for the southern district of Iowa, this 25th day of April, A. D. 1904.

SMITH McPHERSON, *Judge.*

Service of a copy of the within and foregoing citation is hereby admitted this 26th day of April, A. D. 1904.

CARR, HEWITT, PARKER & WRIGHT.
JAMES C. DAVIS.

65½ [Endorsed:] U. S. circuit court, southern district of Iowa. Greenwich Insurance Co. of New York, and others, *v.* Beryl F. Carroll, auditor of state of the State of Iowa, defendant. Filed May 6, 1904 E. R. Mason, clerk. Citation.

66 And afterwards, to-wit, on the 24th day of May, 1904, there was filed in the clerk's office of said court for said district, the following order, which is in words and figures following, to-wit:

United States Circuit Court, Southern District of Iowa, Central Division.

GREENWICH INSURANCE COMPANY ET AL.
vs.
BERYL F. CARROLL, Auditor of the State of Iowa. } No. 2410. Equity.

It being made to appear to the court that it is impossible for the clerk to prepare the transcript within thirty days from the signing the citation under and by authority vested in me by rule 9 of the Supreme Court of the United States, it is hereby ordered that the time for making and preparing and filing in the Supreme Court of the United States a transcript in the above entitled cause be enlarged to the 22nd day of June, 1904.

(Signed) SMITH McPHERSON, *Judge.*

(Endorsed:) Filed May 24, 1904, E. R. Mason, clerk.

67 United States Circuit Court, Southern District of Iowa, Central Division.

I, Edward R. Mason, clerk of said court for said district, do hereby certify that the foregoing is a full, true and complete copy of the pleadings, proceedings and record entries, including the original citation with acceptance of service thereon, in a certain cause adjudicated in said court, wherein Greenwich Insurance Company *et al.*, were complainants and Beryl F. Carroll, auditor of the State of Iowa was respondent, as full, true and complete as the original of the same now remains on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the city of Des Moines, in said district, this 9th day of June, A. D. 1904.

[Seal U. S. Circuit Court, Southern District Iowa.]

EDWARD R. MASON,
Clerk U. S. Circuit Court, Southern District of Iowa.

Endorsed on cover: File No. 19,399. S. Iowa C. C. U. S. Term No. 299. Beryl F. Carroll, auditor of state of the State of Iowa, appellant, *vs.* The Greenwich Insurance Company of New York *et al.* Filed June 20", 1904. File No. 19,399.

MOTION TO ADVANCE.

Supreme Court of the United States

OCTOBER TERM, 1904.

No. 299.

BERYL F. CARROLL, AUDITOR OF STATE OF THE STATE OF IOWA, APPELLANT,

v.

THE GREENWICH INSURANCE COMPANY OF NEW YORK ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

MOTION TO ADVANCE.

The above named appellant respectfully moves the Court that this cause be advanced upon the calendar for hearing and submission upon a day certain to be fixed by this Honorable Court, and shows the following grounds for such motion:

I.

The appellant, as Auditor of State of the State of Iowa, is, by the decree of the court below, appealed from herein, enjoined and restrained from enforcing against the Insurance Companies, appellees herein, certain laws of the State of Iowa prohibiting said Insurance Companies and others from entering into any combination or agreement relating to rates to be charged for insurance, or the amounts of commissions to be allowed agents for procuring the same, or the manner of transacting the fire insurance business within the State of Iowa; and also authorizing and requiring appellant, as such public officer of the State of Iowa to revoke the authority of said Insurance Companies, appellees herein, and other non-resident and foreign insurance companies, to transact insurance business in the State of Iowa where they are found by him upon inquiry and examination to be guilty of violating said laws.

Such decree of the court below, appealed from herein, amounts to a license authorizing said Insurance Companies, appellees herein, to violate and disregard said laws of the State of Iowa, and to enter into unlawful combinations at their will and pleasure, fixing exorbitant rates of insurance to be charged the citizens and people of the State of

Iowa while said decree and injunction remains in force and unreversed.

The people of the State of Iowa are wholly without remedy to recover back exorbitant rates of insurance which may thus and thereby be extorted from them under licenses granted to the Insurance Companies, appellees, while the decree of the court below remains unreversed.

The Government of the State of Iowa is thus and thereby embarrassed in its operations in the due and lawful protection of its citizens and people while the questions in this cause remain unsettled, and while appellant is thus enjoined and restrained from enforcing its laws.

II.

The questions involved in this cause as above stated are of great and general public importance to the State of Iowa and to its people, as well as to all the other States as touching the power of said State of Iowa, and the other States, to prohibit and prevent non-resident and foreign insurance companies within its and their limits from entering into combinations and compacts establishing exorbitant and unjust rates to be charged for insurance within said State, and within the other States.

WHEREFORE, appellant prays that this cause may be advanced upon the calendar for hearing and submission.

CHAS. W. MULLAN,
Attorney General of Iowa,
for Appellant.

CHAS. A. CLARK,
of Counsel.

STATEMENT AND POINTS IN SUPPORT OF MOTION.

I.

STATEMENT.

Chapter 4 of Title IX of the Code of Iowa, 1897, as to fire insurance companies provides as follows:

Sec. 1722 requires any fire insurance company desiring to transact business in the State of Iowa to make application to the Auditor of State.

Sec. 1724. "CERTIFICATE. When any foreign company has fully complied with the requirements of law and become entitled to do business, the auditor of state shall issue to such company a certificate of that fact, which certificate shall be renewed annually on the first day of March, if the auditor is satisfied that the capital, securities and investments of such company remain unimpaired, and the company has complied with the provisions of law applicable thereto."

Sec. 1725. "AGENT TO HAVE CERTIFICATE OF AUTHORITY. No agent shall directly or indirectly act for any insurance company referred to in this chapter, in taking risks or transacting business of insurance in the state, without procuring from the auditor of state a certificate of authority to the effect that such company has complied with all the requirements of this chapter."

Sec. 1747. "DOING BUSINESS WITHOUT COMPLIANCE. Every insurance company organized under the laws of or doing business in this state shall conform to all the

provisions of this chapter and to other laws of this state whether now existing or hereafter enacted, applicable thereto, and when necessary any existing company shall change its charter and by-laws so as to conform thereto, by a vote of a majority of its board of directors." * * *

All of the foregoing sections were contained in the Code of Iowa of 1873, and have been in force since that date.

ANTI-COMPACT ACT.

Sec. 1754. "COMBINATIONS. It shall be unlawful for two or more fire insurance companies doing business in this state, or for the officers, agents or employes of such companies, to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring the same, or the manner of transacting the fire insurance business within this state; and any such company, officer, agent or employe violating this provision shall be guilty of a misdemeanor, and on conviction thereof shall pay a penalty of not less than one hundred dollars nor more than five hundred dollars for each offense, to be recovered in the name of the state for the use of the permanent school fund." (26 G. A., ch. 22, Par. 1.)

Sec. 1755. "REVOCATION OF AUTHORITY. The auditor of state is authorized to summon before him, for examination under oath, any officer, agent or employe of any such company suspected of violating any of the provisions of the preceding section, and, on complaint to him in writing by two or more residents of this state charging such com-

pany under oath upon their knowledge or belief with violating the provisions of the preceding section, he shall summon any officer, agent or employe of said company before him for examination under oath; if upon such examination, and that of any other witness produced and examined, he shall determine that such company is guilty of a violation of any of the provisions of the preceding section, or if any such officer, agent or employe after being duly summoned shall fail to appear or submit to examination, the auditor shall forthwith issue an order revoking the authority of such company to transact business within this state, and it shall not thereafter be permitted to do the business of fire insurance in this state at any time within one year therefrom." (Same, Par. 2.)

Sec. 1756. "APPEAL. Either party may appeal from the decision of the auditor, made pursuant to the preceding section, to the district court of the county where the same was made, within twenty days from the time of the rendition of such decision, by serving a written notice of such appeal on the opposite party and on the auditor, and filing with the clerk of said court a good and sufficient bond for the payment of all costs on the appeal in case the decision shall be affirmed. On such appeal said court shall try the case *de novo*, as equitable cases are tried, and on such evidence as either party may produce, and may reverse, modify or affirm the decision of the auditor." (Same, Par. 3.)

The last three sections above set out were originally passed in 1896 by the Twenty-Sixth General Assembly, and have been in force since that date.

The bill in this suit seeks to enjoin appellant as Auditor of State of the State of Iowa from in any manner enforcing any of the provisions of sections 1754, 1755, and 1756 of the Code of Iowa, and from revoking the authority of the Insurance Companies, appellees, or any of them, or any fire insurance companies similarly situated, for transacting business within the State on account of alleged violation of the provisions of section 1754, and from instituting any proceeding of any kind or character designed to enforce the provisions of section 1754.

(See Bill, Record, pp. 1 to 9, and Prayer for Relief, Record, pp. 8 and 9.)

The decree of the court below enjoins and restrains appellant and his successors in office from enforcing the above Laws of Iowa as prayed for in and by the Bill,—said decree being in all respects as broad as the prayer for relief.

(See Record, pp. 29-31)

POINTS.

I.

It thus appears that the powers of the State government acting by and through its appointed officer, appellant, as Auditor of State, are absolutely paralyzed, nullified and abrogated as to the enforcement of its laws for the protection of its people against exorbitant insurance rates by the decree of the court below.

It appears that this is done at the prayer of foreign insurance companies, several of whom are corporations of

Great Britain, and all of whom are required to make application to the Auditor of State for leave to transact business in Iowa, subject to all of the laws of Iowa.

II.

A license is thus secured from the Federal Courts for foreign insurance companies to violate the laws of Iowa, and to enter into such compacts and agreements as they see fit for extorting exorbitant rates from the people of Iowa. This extortion may go on so long as the license thus secured remains in force. No method can be devised by which the people may recover back the extortionate rates which they are compelled to pay.

III.

To abrogate and nullify said laws in this manner and to authorize and license their violation in the matter of extortionate insurance rates is to deprive the State of power to protect its citizens and people and to seriously harrass and impair the rights of the sovereign State to maintain good government within its own confines, and within its exclusive jurisdiction.

IV.

The powers of government of all the States, as well as the State of Iowa, are involved in the questions presented.

It is respectfully submitted that these questions are of such great and general importance that the cause should be advanced for hearing.

CHAS. W. MULLAN,
Attorney General of Iowa,
for Appellant.

CHAS. A. CLARK,
of Counsel.

NOTICE.

The appellees in the above entitled cause, and their attorneys, are hereby notified that the foregoing motion, and showing in support thereof, will be submitted to the Supreme Court of the United States at its regular session in Washington, D. C., on the 19th day of December, 1904, at twelve o'clock, noon, or as soon thereafter as counsel can be heard.

CHAS. W. MULLAN,
Attorney General of Iowa,
for Appellant.

CHAS. A. CLARK,
of Counsel.

Service of the above and foregoing notice is accepted, and copy thereof, together with annexed motion and showing, received, this.....day of December, 1904.

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Attorneys for Appellees.

Brief and Argument of Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

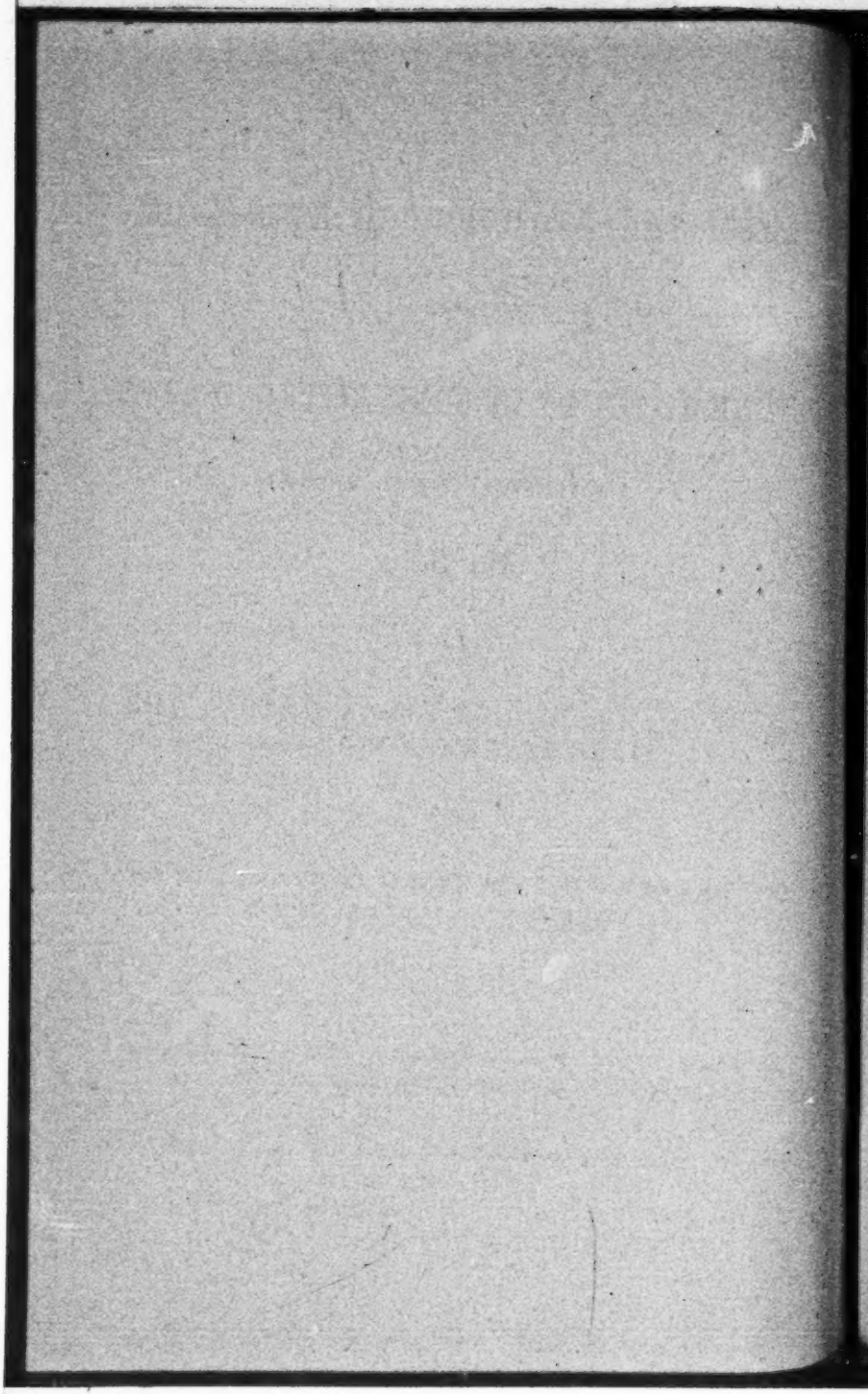
No. 50.

BERYL F. CARROLL, AUDITOR OF STATE OF THE STATE OF IOWA, APPELLANT,

vs.

THE GREENWICH INSURANCE COMPANY OF NEW YORK, ET AL, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF IOWA.



BRIEF AND ARGUMENT OF APPELLANT.

Statement of the Case.

This is an action in equity brought by the Greenwich Insurance Company and other fire insurance companies, all of which are foreign to the State of Iowa, against Beryl F. Carroll, Auditor of State of the State of Iowa, for the purpose of having sections 1754, 1755, 1756 and 1757 of the Code of Iowa declared invalid, for the reason that they infringe and violate the provisions of section 6 of Article I and section 30 or Article III of the Constitution of the State of Iowa, and that they infringe and violate section 10 of Article I of the Constitution of the United States, and Article XIV of the amendments to the Constitution of the United States; and to have the defendant Beryl F. Carroll, Auditor of the State of Iowa, and his successors in office, perpetually enjoined from enforcing the provisions of sections 1754, 1755, 1756 and 1757 against the complainants, and to enjoin the said Beryl F. Carroll, Auditor of State of the State of Iowa and his successors in office, from calling or bringing before him or them for examination under oath any officer, agent or employee of any of said complainants for any alleged violation of the provisions of said sections or either of them; and to enjoin the said Beryl F. Carroll, Auditor of State of the State of Iowa and his successors in office, from entertaining any complaint made to him or them in writing or otherwise, charging the complainants or either of them with violation of section 1754 of the Code of Iowa; and to enjoin and restrain the said Beryl F. Carroll and his successors in office from issuing any order or revoking the authority of said complainants or either of them to transact business within the State of Iowa, and from in anywise interfering with such complainants or either of them in the transaction of business in the State of Iowa, because of any alleged violation of the provisions of section 1754 of the Code.

The bill of complainants was filed in the office of the clerk of the Circuit Court of the United States for the southern district of Iowa on the 12th day of March, 1903. On the 6th day of June, 1903, the appellant, Beryl F. Carroll, filed in the office of the clerk of said court a demurrer to the bill of complainants. Afterward complainants, by leave of court, amended their bill, and an order of record was made by the judge of the circuit court that the demurrer should be held to apply to the bill as amended.

The questions presented by the bill and the demurrer are:

First. Are sections 1754, 1755, 1756 and 1757 of the Code of Iowa invalid because they infringe the provisions of section 6 of Article I, or the provisions of section 30 of Article III, of the Constitution of the State of Iowa?

Second. Are said sections of the Code of Iowa invalid because they offend the provisions of Article XIV of the amendments to the Constitution of the United States?

Third. Are said sections of the Code of Iowa invalid because repugnant to section 10 of Article I of the Constitution of the United States?

The sections of the Iowa Code which the complainants seek to have declared invalid are as follows:

"Sec. 1754. It shall be unlawful for two or more fire insurance companies doing business in this state, or for the officers, agents or employees of such companies, to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring the same, or the manner of transacting the fire insurance business within this state; and any such company, officer, agent or employee violating this provision shall be guilty of a misdemeanor, and on conviction thereof shall pay a penalty of not less than one hundred dollars nor more than five hundred dollars for each offense, to be recovered in the name of the state for the use of the permanent school fund.

Sec. 1755. The auditor of state is authorized to summon before him, for examination, under oath, any officer, agent or employee of any such company suspected of violating any of

the provisions of the preceding section, and, on complaint to him in writing, by two or more residents of this state, charging such company under oath upon their knowledge or belief with violating the provisions of the preceding section, he shall summon any officer, agent or employee of said company before him for examination under oath; if upon such examination, and that of any other witness produced and examined, he shall determine that such company is guilty of a violation of any of the provisions of the preceding section, or if any such officer, agent or employee after being duly summoned shall fail to appear or submit to examination, the auditor shall forthwith issue an order revoking the authority of such company to transact business within this state, and it shall not thereafter be permitted to do the business of fire insurance in this state at any time within one year therefrom.

Sec. 1756. Either party may appeal from the decision of the auditor, made pursuant to the preceding section, to the district court of the county where the same was made, within twenty days from the time of the rendition of such decision, by serving a written notice of such appeal on the opposite party and on the auditor, and filing with the clerk of said court a good and sufficient bond for the payment of all costs on the appeal in case the decision shall be affirmed. On such appeal said court shall try the case *de novo*, as equitable causes are tried, and on such evidence as either party may produce, and may reverse, modify or affirm the decision of the auditor.

Sec. 1757. The statements and declarations made or testimony given by any such officer, agent or employee in the investigation before the auditor, or upon the hearing and trial before the district court, as provided in the two preceding sections, shall not be used against the person making the same in any criminal prosecution against him."

Section 6 of Article I of the Constitution of the State of Iowa is as follows:

"All laws of a general nature shall have uniform operation. The general assembly shall not grant to any citizen or class of citizens privileges or immunities which in the same terms shall not equally apply to all citizens."

Section 30 of Article III of the Constitution of the State of Iowa provides:

"The general assembly shall not pass local or special laws in the following cases:

For the assessment and collection of taxes for state, county or road purposes;

For laying out, opening and working roads or highways;

For changing the names of persons;

For the incorporation of cities and towns;

For vacating roads, town plats, streets, alleys or public squares;

For locating or changing county seats.

In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the state; * * *"

The case was argued to His Honor Judge McPherson of the circuit court of the southern district of Iowa, and on the 19th day of October, 1903, the demurrer of defendant was by the court overruled, and the order of the court overruling the same entered of record.

On the 7th day of March, 1904, the defendant, having elected to stand upon his demurrer, and having declined to further plead to or answer the original and amended bill of the complainants, a decree was entered by the judge of said court by which the defendant Beryl F. Carroll, Auditor of State of the State of Iowa and his successors in office, were and are perpetually enjoined from enforcing the provisions of said sections of the statute of Iowa against the complainants, and from in any manner calling or bringing before him for examination under oath any officer, agent or employee of said complainants for any violation of the provisions of said sections, and from entertaining any complaint made to the defendant and his successors in office in writing or otherwise, charging the complainants or either of them with the violation of section 1754, and enjoining and restraining the defendant and his successors in office from issuing any order revoking the authority of complainants or either of them to transact business in the State of Iowa or in anywise interfering with such complainants doing business in said state.

The decree of the court further adjudged that the said de-

fendant Beryl F. Carroll, as Auditor of State of the State of Iowa, be required to pay the costs of this proceeding taxed at the sum of $———.

The defendant at the time of entering of such decree duly excepted thereto, and to each provision thereof, and on the 25th day of April, 1904, appealed from such decree to this court, and filed in the office of the clerk of the circuit court of the United States for the southern district of Iowa, his assignment of errors, which appears upon pages 32 and 33 of the record.

Errors Relied Upon.

First. That the court erred in overruling the demurrer to complainants' bill, and in not dismissing the bill.

Second. The court erred in perpetually enjoining the defendant, Beryl F. Carroll, Auditor of State of the State of Iowa, and his successors in office, from enforcing against the complainants, and each of them, the provisions of sections 1754, 1755 and 1756 of the Code of Iowa, and in enjoining and restraining the said defendant Beryl F. Carroll, Auditor of State of the State of Iowa, and his successors in office, from in any manner calling or bringing before him or them for examination under oath any officer, agent or employee of said complainants or either of them for any alleged violation of the provisions of said sections 1754, 1755 and 1756 of the Code of Iowa.

Third. The court erred in enjoining and restraining the said Beryl F. Carroll, Auditor of State of the State of Iowa, defendant herein, and his successors in office, from entertaining any complaint made to him or them, in writing or otherwise, charging any of the complainants with violation of section 1754 of the Code of Iowa.

Fourth. The court erred in enjoining and restraining the said defendant, Beryl F. Carroll, Auditor of State of the State of Iowa, and his successors in office, from issuing any order revoking the authority of any of the complainants to trans-

act the business of insurance within the State of Iowa, and from in anywise interfering with such complainants in doing business in the State of Iowa, because of any alleged violation of the provisions of said section 1754 of the Code of Iowa.

Fifth. The court erred in holding and adjudging that the provisions of sections 1754 and 1755 of the Code of Iowa violate and infringe the provisions of the Constitution of the State of Iowa, and the provisions of section 6 of Article I thereof, and in holding that said law is not uniform in its operation, and that thereby privileges and immunities are granted to citizens of the the State of Iowa other than fire insurance companies transacting business therein, which are withheld from complainants.

Sixth. The court erred in holding that the provisions of sections 1754, 1755, 1756 and 1757 of the Code of Iowa violate and infringe Article XIV of the amendments to the Constitution of the United States, and deprive the complainants of liberty, property, and property rights without due process of law, and deny to said complainants the equal protection of the laws of the State of Iowa.

Seventh. The court erred in holding that the provisions of sections 1754, 1755, 1756 and 1757 of the Code of Iowa violate and infringe section 10 of Article I of the Constitution of the United States, and impair the obligation of contracts.

Eighth. The court erred in adjudging that the defendant, Beryl F. Carroll, Auditor of State of the State of Iowa, be required to pay the cost of this proceeding, and in entering judgment therefor and ordering execution to issue thereon.

BRIEF.

I.

First. The provisions of sections 1754, 1755, 1756 and 1757 of the Code of Iowa do not violate or infringe section 6 of Article I of the Constitution of Iowa, as they operate equally upon every person within the relations and circumstances provided for, and the class of persons affected thereby is a

natural and proper class for legislative purposes, and not arbitrarily created by the legislature.

Cooley on Const. Lim. (6th ed.), 480;
Magoun vs. Ill. Trust & Sav. Bank, 170 U. S., 294;
Minneapolis Ry. Co. vs. Beckwith, 129 U. S., 29;
Orient Ins. Co. vs. Daggs, 172 U. S., 560;
Mo. Ry. Co. vs. Mackey, 127 U. S., 205, 209;
Kennedy vs. Ins. Co., 165 Pa. St., 183.

Second. The statute in question extends to and embraces equally all persons who fall within the classification, and is therefore valid under the state constitution.

Barbier vs. Connolly, 113 U. S., 27;
Sutton vs. State, 96 Tenn., 696;
City of Des Moines vs. Bolton, 102 N. W. Rep. (Iowa), 1045;
State vs. Garbroski, 111 Iowa, 499;
Iowa R. Land Co. vs. Soper, 39 Iowa, 112;
McAunich vs. M., etc., R. Co., 20 Iowa, 338;
Morris vs. Stout, 110 Iowa, 659.

II.

The statute in question does not contravene any of the provisions of section 30 of Article III of the Constitution of Iowa.

Smith vs. Judge, 17 Calif., 554;
French vs. Teschemaker, 24 Cal., 544.

III.

The provisions of the sections of the Iowa Code in question do not violate or infringe section 10 of Article I of the Constitution of the United States, and do not impair the obligation of existing contracts.

Edwards vs. Kearzey, 96 U. S., 603;
Denny vs. Bennett, 128 U. S., 495;
Lehigh Water Co. vs. Easton, 121 U. S., 391;
Cent. Land Co. vs. Laidley, 159 U. S., 109;
Pinney vs. Nelson, 183 U. S., 147;
Oshkosh Water Works Co. vs Oshkosh, 187 U. S., 439.

IV.

The Iowa statute does not deprive any person of liberty or property, and does not restrict or abridge the liberty of contract; nor does any provision of such statute in any manner violate or infringe any provision of the fourteenth amendment to the federal constitution.

Gibbons vs. Ogden, 9 Wheat., 1;
Morris Run Coal Co. vs. Barclay Coal Co., 68 Pa. St., 173;
Arnot vs. Pittston & Elmyra Coal Co., 68 N. Y., 558;
Cent. Ohio Salt Co. vs. Guthrie, 35 Ohio St., 666;
Craft vs. McConoughy, 79 Ill., 346;
People vs. Chicago Gas Trust Co., 130 Ill., 268;
Richardson vs. Bull, 77 Mich., 632;
Santa Clara Mill & Lumber Co. vs. Hayes, 79 Cal., 387;
India Bagging Ass'n vs. Kock, 14 La. Ann., 168;
Northern Securities Co. vs. United States, 193 U. S., 197, 339;
People vs. Sheldon, 139 N. Y., 251;
State ex rel. Atty. Gen. vs. Fireman's Fund Ins. Co., 152 Mo., 45; 45 L. R. A., 363;
State ex rel. Monnett vs. Buckeye Pipe Line Co., 61 Ohio St., 520;
Stanton vs. Allen, 5 Denio, 334;
Watson vs. Harlem & N. Y. Nav. Co., 52 How. Prac., 348;
Anderson vs. Jett, 89 Ky., 375;
Nester vs. Continental Brewing Co., 161 Pa. St., 473;
Texas Standard Oil Co. vs. Adoue, 83 Texas, 650;
Park & Sons Co. vs. National Wholesale Druggists Ass'n, 50 N. Y. Supp., 1064;
People vs. Milk Exchange, 145 N. Y., 267;
Emery vs. Ohio Candle Co., 47 Ohio St., 320;
Chapin vs. Brown Bros., 83 Iowa, 156;
DeWitt Wire Cloth Co. vs. N. J. Wire Cloth Co., 14 N. Y. Supp., 277;

United States vs. Knight Co., 156 U. S., 1;
United States vs. Freight Ass'n, 166 U. S., 290;
United States vs. Joint Traffic Ass'n, 171 U. S., 505;
Addyston Pipe & Steel Co. vs. United States, 175 U. S., 228;
Barron vs. Baltimore, 7 Pet., 247;
Fox vs. State of Ohio, 5 How., 434;
Withers vs. Buckley, 20 How., 90;
Twitchell vs. Commonwealth, 7 Wall., 326;
Pumpelly vs. Green Bay Co., 13 Wall., 176;
Spies vs. Illinois, 123 U. S., 166;
Bridge Co. vs. Dix, 6 How., 531;
State vs. Phipps, 50 Kansas, 609;
Paul vs. Virginia, 75 U. S., 168;
Mo. Ry. Co. vs. Mackey, 127 U. S., 205;
Orient Ins. Co. vs. Daggs, 172 U. S., 557;
Hooper vs. California, 155 U. S., 648.

ARGUMENT.

The errors assigned present four questions for determination by this court, which may be stated as follows:

First. Do the provisions of sections 1754, 1755, 1756 and 1757 of the Code of Iowa violate or infringe the provisions of section 6 of Article I of the Constitution of the State of Iowa?

Second. Do the provisions of said sections violate or infringe the provisions of section 30 of Article III of the Constitution of said state?

Third. Do the provisions of said sections violate or infringe the provisions of section 10 of Article I of the Constitution of the United States?

Fourth. Do the provisions of said sections violate or infringe Article XIV of the amendments to the Constitution of the United States?

These questions will be discussed in the order stated.

I.

Are the provisions of the sections of the Iowa statute referred to repugnant to section 6 of Article I of the Constitution of the State, and invalid for that reason?

First. Section 6 of Article I of the Constitution of Iowa is as follows:

"All laws of a general nature shall have uniform operation. The general assembly shall not grant to any citizen or class of citizens privileges or immunities which in the same terms shall not equally apply to all citizens."

It is contended by complainants that the Iowa statute is not uniform in its operation, that it is class legislation, and is repugnant to the provisions of the Constitution quoted, and therefore invalid.

The contention of the defendant is that the statute does not offend the provisions of the state constitution; that it operates equally upon every person within the relations and circumstances provided for; that the class of persons affected by it is a natural one, and not arbitrarily created by the legislature, and that it is therefore of sufficient uniformity to fully conform to the provisions of the constitution.

Section 1754 of the Code provides that it shall be unlawful for two or more fire insurance companies doing business in this state, or for the officers, agents or employees of such companies, to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring the same, or the manner of transacting fire insurance business within this state; and any such company, officer, agent or employee violating this provision, shall be guilty of a misdemeanor, and on conviction thereof shall pay a penalty of not less than one hundred dollars nor more than five hundred dollars for each offense, to be recovered in the name of the state for the use of the permanent school fund.

Sections 1755, 1756 and 1757 provide the method for the enforcement of the provisions of section 1754.

It is within the power of the state to distinguish, select and classify objects of legislation, and necessarily this power must have a wide range of discretion.

If the classification made by the Iowa legislature is a reasonable one, and based upon some difference which bears a just and proper relation to such classification, it is not an arbitrary classification by the legislature, nor is it invalid under the constitutional provision.

Mr. Cooley in his work on Constitutional Limitations says:

"The legislature may also deem it desirable to prescribe peculiar rules for the several occupations, and to establish distinctions in the rights, obligations, duties and capacities of citizens. The business of common carriers, for instance, or of bankers, may require special statutory regulations for the general benefit, and it may be matter of public policy to give laborers in one business a specific lien for their wages, when it would be impracticable or impolitic to do the same for persons engaged in some other employments. If the laws be otherwise unobjectionable, all that can be required in these cases is, that they be general in their application to the class or locality to which they apply; and they are then public in character, and of their propriety and policy the legislature must judge." Cooley on Constitutional Limitations, 6th Ed., 480.

In *Magoun vs. Illinois Trust & Savings Bank*, 170 U. S., 294, it is said:

"In other words, the state may distinguish, select and classify objects of legislation, and necessarily this power must have a wide range of discretion. It is not without limitation, of course. 'Clear and hostile discriminations against particular persons and classes, especially such as are of unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition,' said Mr. Justice Bradley, in *Bell's Gap Railway vs. Pennsylvania*, 134 U. S., 237. * * * Two principles, therefore, must be reconciled in the Illinois inheritance law if it is to be sustained, the equality of protection of the laws guaranteed by the fourteenth amendment, and the power of the state to classify persons and property. The latter principle needs further consideration. What test is there of the reasonableness of a classification — of one based upon 'some

difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection?' Legislation special in character is not forbidden by it, as we have seen. Treating mechanics as a class and giving them a lien for the amount of their work, has been held reasonable. * * * There is, therefore, no precise application of the rule of reasonableness of classification, and the rule of equality permits many practical inequalities. And necessarily so. In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things."

In *Minneapolis Railway Co. vs. Beckwith*, 129 U. S., 29, it is said:

"Equality of protection implies not merely equal accessibility of the courts for the prevention or redress of wrongs and the enforcement of rights, but equal exemption with others in like conditions from charges and liabilities of every kind. But the clause does not limit, nor was it designed to limit, the subjects upon which the police power of the state may be exerted. The state can now, as before, prescribe regulations for the health, good order and safety of society, and adopt such measures as will advance its interests and prosperity. And to accomplish this end special legislation must be resorted to in numerous cases, providing against accidents, disease and danger, in the varied forms in which they may come. The nature and extent of such legislation will necessarily depend upon the judgment of the legislature as to the security needed by society."

That fire insurance companies are a natural class which may be made the object of special statutory regulation for the general public benefit, has been frequently decided by this court and the courts of the several states.

Fire insurance is a class of business standing as distinctly by itself as banking, life insurance or the operation of railways. Its classification for legislative purposes is natural, reasonable and necessary.

Every state, or nearly every state in the Union has, by statutory enactment, regulated the business of fire insurance within its territory. The power of the state to make such regulation is absolutely essential to the preservation of the sovereignty of the state and to the protection of its citizens.

In *Bridge Co. vs. Dix*, 6 How., 531, it is said:

"The Constitution of the United States, although adopted by the sovereign states of this Union, and proclaimed in its own language to be the supreme law for their government, can, by no rational interpretation, be brought to conflict with this attribute in the states."

While this language was used with reference to the right of eminent domain, it applies with equal force to the right to control the internal business affairs of the state.

In *Kennedy vs. Ins. Co.*, 165 Pa. St., 183, it is said:

"Foreign insurance companies, licensed to transact business in this state, have always been considered and are in fact an essential and distinct class of corporations, justifying and requiring legislation appropriate to the class itself. If such companies, owing their existence to some authority outside and not having their principal offices within the state, are permitted to transact business here, it must necessarily be upon such terms and conditions as will enable the insurance department of the commonwealth to supervise their business operations, etc., and place them within the easy and convenient reach of process at the suit of the commonwealth or any of its citizens."

In *State vs. Phipps*, 50 Kansas, 609, it is said:

"The state has power to regulate and control, and to provide penalties for the transgression of its regulating and controlling statutes, of the business of a foreign insurance company within its boundaries."

Other cases from state courts might be cited, but the right of a state to control and regulate the business of fire insurance within its territory has been so frequently declared by this court that it is deemed unnecessary.

In *Paul vs. Virginia*, 75 U. S., 168, the power of the state legislature to regulate and control foreign insurance companies within the state, is fully recognized. With reference to such companies it is there said:

"Having no absolute right or recognition in other states, and depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course,

that such assent may be granted upon such terms and conditions as those states may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest; the whole matter rests in their discretion."

In *Missouri Railway Co. vs. Mackey*, 127 U. S., 205, it is said by Mr. Justice Field:

"It cannot be successfully contended that the state may not prescribe the liabilities under which corporations created by its laws shall conduct business in the future, where no limitation is placed upon its power in this respect by their charters. Legislation to this effect is found in the statute books of every state."

In *Hooper vs. California*, 155 U. S., 648, it is said by Mr. Justice White:

"The State of California has the power to exclude foreign insurance companies altogether from her territory, whether they were formed for the purpose of doing a fire or marine business. She has the power, if she allows any such companies to enter her confines, to determine the conditions on which the entry shall be made. And, as a necessary consequence of her possession of these powers, she has the right to enforce any conditions imposed by her laws as preliminary to the transaction of business within her confines by a foreign corporation, whether the business is to be carried on through officers or through ordinary agents of the company, and she has also the further right to prohibit a citizen from contracting within her jurisdiction with any foreign company which has not acquired the privilege of engaging in business therein, either in his own behalf or through an agent empowered to that end. The power to exclude embraces the power to regulate, to enact and enforce all legislation in regard to things done within the territory of the state which may be directly or incidentally requisite in order to render the enforcement of the conceded power efficacious to the fullest extent, subject always, of course, to the paramount authority of the Constitution of the United States."

The question of the power of the state to classify fire insurance companies for legislative purposes arose in *Orient Ins.*

Co. vs. Daggs, 172 U. S., 560. The decision of the case involved the validity of a Missouri statute requiring fire insurance companies doing business in that state to pay the face value of their policies. It was contended by the insurance companies that the Missouri statute was class legislation; that fire insurance companies were singled out from other corporations as the objects of hostile legislation; that the classification was arbitrary and unnatural; that it discriminated against fire insurance companies and did not affect alike all persons similarly situated; that the statute abridged the liberty of contract, and was for these reasons invalid. In determining the question thus presented, Mr. Justice McKenna, speaking for this court, said:

"It is not necessary to state the reasoning upon which classification by legislation is based or justified. This court has had many occasions to do so and only lately reviewed the subject in *Magoun vs. Illinois Trust and Savings Bank*, 170 U. S., 283. We said in that case that 'the state may distinguish, select and classify objects of legislation, and necessarily this power must have a wide range of discretion.' And this because of the function of legislation and the purposes to which it is addressed. Classification for such purposes is not invalid because not depending on scientific or marked differences in things or persons or in their relations. It suffices if it is practical, and is not reviewable unless palpably arbitrary. We see many differences between fire insurance and other insurance, both to the insurer and the insured—differences in the elements insured against and the possible relation of the parties to them, producing consequences which may justify if not demand different legislative treatment. Of course it is not for us to debate the policy of any particular treatment, and the freedom of discretion which we have said the state has is exhibited by analagous if not exact examples to the Missouri statute in *Railway Company vs. Mackey*, 127 U. S., 204, and in *Minneapolis & St. Louis Railway vs. Beckwith*, 129 U. S., 26. * * "That which a state may do with corporations of its own creation it may do with foreign corporations admitted into the state. * * * The power of a state to impose conditions upon foreign corporations is certainly as extensive as the power over domestic corporations, and is fully explained in *Hooper vs. California*, 155 U. S., 648, and need not be repeated."

Under these decisions there is no escape from the conclusion that it is within the power of the Iowa legislature to classify fire insurance companies transacting business within the state for legislative purposes, and to control and regulate such business within the territorial limits of the state. In passing the statute under consideration the state simply exercised its power of sovereignty in classifying a business for legislative purposes and in attempting to regulate and control such business. The statute is not open to the objection that it is class legislation or that the state has exceeded its power.

Second. Does the statute in question extend to and embrace equally all persons who fall within the classification?

If it does, it is a sufficient compliance with the constitutional provision.

In *Barbier vs. Connolly,* 113 U. S., 27, it is said:

"Class legislation discriminating against some and favoring others is prohibited, but legislation which in carrying out a public purpose is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

The rule stated by the supreme court of Tennessee in *Sutton vs. State,* 96 Tenn., 696, and adopted by the supreme court of Iowa in *State vs. Garbroski,* 111 Iowa, 499, clearly and concisely distinguishes constitutional from unconstitutional legislation, where the enactment is applicable to a particular class. The rule is stated as follows:

"First, it must be so formed as to extend to and embrace equally all persons who are or may be in like situation or circumstances; and, secondly, the classification must be natural and reasonable, and not arbitrary or capricious."

In the recent case of the *City of Des Moines vs. Bolton,* 102 N. W. Rep., 1045, it is said:

"The constitutional requirement that all laws of a general nature shall have a uniform operation means that every law shall have a uniform operation upon all citizens, persons or things of any class upon which it purports to act and that there shall not be granted to any person or class of persons privi-

leges which upon the same terms may not be enjoyed by all. So an act that applies to and embraces all of a class of persons who stand in the same condition or relation, is a general and not special law within the meaning of the Constitution, as uniformity is obtained by its operation on all persons in like condition. *Iowa R. Land Co. vs. Soper*, 39 Iowa, 112; *McAunich vs. M., Etc., R. Co.*, 20 Iowa, 338; *Morris vs. Stout*, 110 Iowa, 659 (78 N. W., 834; 50 L. R. A., 97). This general rule is subject only to the exception that the classification shall not be purely arbitrary or unreasonable. Cooley's Const. Lim., 481, *et seq.*; *State of Iowa vs. Garbroski*, 111 Iowa, 496."

This statement of the learned judge who wrote the opinion is a clear enunciation of the rule governing legislation of this character, and is in harmony with all the decisions of the various courts upon the question. The statute embraces all fire insurance companies, their officers, agents and employees doing business within the State of Iowa. None is excluded, and the statute acts equally and impartially upon all. They are grouped in a single class for legislative purposes, and the act is applicable to every corporation and person who falls within that class.

Under these authorities it is respectfully urged that it must be held by this court:

That fire insurance companies are a proper and natural class for legislative purposes.

That the statute in question bears equally upon all persons who fall within the class.

That it does not infringe the provisions of section 6 of Article I of the Constitution of the State.

II.

Is the statute in question in contravention of any of the provisions of section 30 of Article III of the Constitution of Iowa?

The provisions of that section, as far as they relate to the question presented, are as follows:

"The general assembly shall not pass local or special laws in the following cases:

For the assessment and collection of taxes for state, county or road purposes;

For laying out, opening and working roads or highways;

For changing the names of persons;

For the incorporation of cities and towns;

For vacating roads, town plats, streets, alleys or public squares;

For locating or changing county seats.

In all the cases above enumerated, and in all other cases where a general law can be applicable, all laws shall be general and of uniform operation throughout the state; * * *"

Certain subjects are named in this constitutional provision as to which the legislature is forbidden to pass local or special laws.

It is contended by complainants that the act of the Iowa legislature is a general law, and that it offends the last clause of the constitutional provision quoted, for the reason that it is not of uniform operation throughout the state.

That it is a general law, is true, and it is also true that it is of uniform operation throughout the state, within the meaning of the constitutional provision. The language of the constitutional provision must be carefully noted. It is not that laws shall be universal or general in their application to the same subject, nor is it even that all laws of a general nature shall be universal or general in their application to such subjects. The provision is that laws of a general nature shall be uniform in their application; that is, that such laws shall bear equally in their burdens and benefits upon persons standing in the same relation.

The clear meaning of the provision is that every law of a general nature shall have a uniform operation upon the citizens, or persons, or things, of any class affected by it, and that the legislature shall not grant to any citizen or class of citizens privileges which upon the same terms shall not equally belong to all citizens.

Smith vs. Judge, 17 Calif., 554;

French vs. Teschemaker, 24 Calif., 544.

The California cases are cited for the reason that the constitutional provision under consideration was adopted by the State of California from the Constitution of Iowa, and its interpretation by the California court is for that reason authoritative.

The statute is state wide in its operation. It bears equally and uniformly upon every fire insurance company in the state.

The regulation of the business of fire insurance companies is an important subject of state legislation. It is one of the great variety of subjects requiring statutory provisions peculiar to itself. It has been forcefully said by an eminent law writer that generic subjects may be divided and subdivided into as many classes as require this peculiar legislation. Thus laws relating to the people, for certain purposes, extend to all alike, as for protection of person and property; for other purposes they are divided into classes, as voters, sane and insane persons, minors, husbands and wives, parents and children, etc. Property is subject to division into classes. Nearly every matter of public concern is divisible, and division is necessary to methodical legislation.

If, therefore, the act under consideration extends to all parts of the state in its operation, and includes and embraces in its provisions all persons and corporations transacting fire insurance business within the state, it is a general law of uniform operation throughout the state, and in harmony with the provisions of the constitution quoted.

III.

Do the provisions of sections 1754, 1755, 1756 and 1757 of the Code of Iowa violate or infringe section 10 of article I of the Constitution of the United States?

The clause of the constitution as to which it is claimed the Iowa statute is repugnant, is that which declares that no state shall pass any law impairing the obligation of contracts.

The contention of complainants appears to be that they are

prevented by the Iowa statute from entering into future contracts in the prosecution of their business in the State of Iowa, and that because so prevented the statute infringes the provision of the Federal Constitution.

It is not alleged in the bill that complainants or either of them entered into any contract prior to the passage of the Iowa statute, which was or is impaired by such enactment.

The question presented, therefore, is whether a state statute, which prohibits the making of certain contracts in the future, is a violation of the provisions of section 10 of Article I of the Federal Constitution, and that question has been determined by this court adversely to the contention of complainants.

In *Edwards vs. Kearzey*, 96 U. S., 603, in reference to this constitutional provision, it is said:

"The inhibition of the Constitution is wholly prospective. The states may legislate as to contracts thereafter made, as they may see fit. It is only those in existence when the hostile law is passed that are protected from its effect."

In *Denny vs. Bennett*, 128 U. S., 495, the principle announced in *Edwards vs. Kearzey* is reaffirmed, and the principle as stated in the latter case is quoted with approval by Mr. Justice Miller in announcing the opinion of the court.

In *Denny vs. Bennett*, it is further said:

"No reason has been suggested why the legislature could not exempt all interests in landed estate from execution and sale under judgments against the owner, and perhaps all of his personal property. However this may be, it is very certain that the established construction of the Constitution of the United States against impairing the obligation of contracts requires that statutes of this class shall be construed to be parts of all contracts made when they are in existence, and therefore cannot be held to impair their obligation."

In *Lehigh Water Co. vs. Easton*, 121 U. S., 391, it is said by Mr. Justice Harlan, speaking for the court:

"Obviously, this clause cannot be invoked for the reversal of the judgment below. It is equally clear that the law of the

state to which the constitution refers in that clause must be one enacted after the making of the contract, the obligation of which is claimed to be impaired."

The same principle is recognized in *Central Land Co. vs. Laidley*, 159 U. S., 109, and in *Pinney vs. Nelson*, 183 U. S., 147, in which it is said by Mr. Justice Brewer:

"It is equally clear that the law of the state to which the Constitution refers in that clause must be one enacted after the making of the contract, the obligation of which is claimed to be impaired. *Lehigh Water Co. vs. Easton*, 121 U. S., 388, 391. See, also, *Central Land Co. vs. Laidley*, 159 U. S., 103, 111; *McCullough vs. Virginia*, 172 U. S., 102, 116."

In *Oshkosh Water Works Co. vs Oshkosh*, 187 U. S., 439, it is said:

"It is well settled that while, in a general sense, the laws in force at the time a contract is made enter into its obligation, parties have no vested right in the particular remedies or modes of procedure then existing. It is true the legislature may not withdraw all remedies, and thus, in effect, destroy the contract; nor may it impose such new restrictions or conditions as would materially delay or embarrass the enforcement of rights under the contract according to the usual course of justice as established when the contract was made. Neither could be done without impairing the obligation of the contract. But it is equally well settled that the legislature may modify or change existing remedies, or prescribe new modes of procedure, without impairing the obligation of contracts, provided a substantial or efficacious remedy remains or is given, by means of which a party can enforce his rights under the contract."

Under the rule of law as enunciated by this court, it is clear that the contention of complainants, that the Iowa statute violates the provisions of section 10 of Article I of the Constitution of the United States, is without force. No contract was entered into by complainants or either of them with any person or persons prior to the enactment of the statute, and no obligation of any contract previously made was impaired by the passage of the act. The state legislature was and is absolutely free to legislate as to future contracts, and this it has done by forbidding the entering into contracts between fire in-

surance corporations whereby a combination is created as to the business of fire insurance in the state. This it had the right to do, and a statute so providing in nowise offends the constitutional provision.

IV.

Does the Iowa statute offend Article XIV of the amendments to the Federal Constitution?

It is the contention of complainants that the statute infringes the provisions of the fourteenth amendment, for the reason that it takes away from fire insurance companies transacting business in the State of Iowa, the liberty of contract.

The provision of the fourteenth amendment to the Federal Constitution which is claimed to be violated by the Iowa statute, is in these words:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

It is of course conceded that any act of the state legislature which restricts or abridges the liberty of contract guaranteed by section 1 of the fourteenth article of the amendments to the Constitution, is invalid.

If sections 1754, 1755, 1756 and 1757 of the Iowa statute restrict or abridge the liberty of contract guaranteed by that amendment they are invalid. On the other hand, if the liberty of contract is not denied the complainants, and if that right is in no manner restricted or abridged by the provisions of the statute, it is not invalid because in conflict with the provisions of the fourteenth article of the amendments to the Federal Constitution, and can be enforced by the state authorities.

It is undoubtedly true, as said in *Lawson vs. Steele*, 150 U. S., 133, that "the legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private

business or impose unusual or unnecessary restrictions upon lawful occupations." But within its jurisdiction, a state legislature may enact a statute prohibiting contracts and combinations which are in restraint of trade and which tend to prevent competition in any class of business carried on within the state.

The Iowa legislature has not undertaken arbitrarily to interfere with private business, or impose any unusual or unnecessary restriction upon any lawful business.

The purpose of the statute, and the end sought to be accomplished by its enactment, is to regulate the business of fire insurance in the state, and to prevent fire insurance companies doing business therein from entering into a contract or combination whereby the right of such companies to enter into lawful contracts with those desiring fire insurance would be restricted and abridged, and whereby competition would be prevented and the cost of fire insurance increased within the state.

In other words, the statute simply prohibits any fire insurance company transacting business in Iowa from entering into an agreement with any other fire insurance company transacting business in the state, if such agreement would restrict the liberty of contract of the companies entering into the same, or would prevent such companies from contracting with persons desiring fire insurance in the state except upon such terms as the companies entering into the contract should agree.

It is designed to maintain fair and lawful competition between fire insurance companies transacting business within the state, and to prevent a combination between such companies which would be harmful to the citizens of the state.

It may be fairly assumed that an evil existed which was sought to be remedied by the enactment of the Iowa statute, and that that evil was the combination of fire insurance companies in the state for the purpose of increasing the cost of insurance.

If the Iowa statute goes no further than to attempt to prevent a combination between corporations transacting the same class of business within the state, and to prevent such corporations from entering into an agreement whereby their liberty to contract with citizens of the state is restricted or abridged, the legislature has not exceeded its constitutional power, and the statute is valid.

The power of the state to regulate and control internal trade, commerce and business, as distinguished from the external concerns of the nation and interstate commerce, was early recognized by this court in *Gibbons vs. Ogden*, 9 Wheat., 1. Mr. Chief Justice Marshall, in delivering the opinion of the court in that case, said:

"The genius and character of the whole government seems to be that its action is to be applied to all external concerns of the nation, and to those internal concerns which affect the states generally; but not to those which are completely within a particular state, which do not affect other states, and with which it is not necessary to interfere, for the purpose of executing some of the powers of the government. The completely internal commerce of a state, then, may be considered as reserved for the state itself."

The principle announced by Mr. Chief Justice Marshall has been since re-affirmed by this court in *New York vs. Miln*, 11 Pet., 133; *Holmes vs. Jennison*, 14 Pet., 616; Licensed Cases, 5 How., 628; Slaughter House Cases, 16 Wall., 63; *Peete vs. Morgan*, 19 Wall., 582; *United States vs. Cruikshank*, 92 U. S., 551; *Leisy vs. Hardin*, 135 U. S., 131; *Plumley vs. Massachusetts*, 155 U. S., 479; *Geer vs. Connecticut*, 161 U. S., 534; *Hennington vs. Georgia*, 163 U. S., 308. It has been recognized by many of the state courts, and acted upon by many of the state legislatures.

In principle there can be no difference between an illegal combination to increase the cost of fire insurance, and such a combination to increase the cost of coal or any other commodity. Fire insurance is as necessary to the business world as is any manufactured product. Numerous cases have been decided by the state courts, many of which are cited with ap-

proval by this court, in which such combinations are declared illegal and statutes prohibiting the same are held not to be in violation of the fourteenth amendment to the Constitution.

The question of the legality of such combinations was presented to the supreme court of Pennsylvania in *Morris Run Coal Co. vs. Barclay Co.*, 68 Pa. St., 173, where certain coal companies were seeking to control, within a large territory, the entire market for bituminous coal. In passing upon the validity of their agreement the supreme court of Pennsylvania said:

"When competition is left free, every individual error or folly will generally find a correction in the conduct of others. But here is a combination of all the companies operating in the Blossburg and Barclay mining regions, and controlling their entire productions. They have combined together to govern the supply and the price of coal in all the markets from the Hudson to the Mississippi rivers, and from Pennsylvania to the Lakes. This combination has a power in its confederated form which no individual action can confer. The public interest must succumb to it, for it has left no competition free to correct its baleful influence. When the supply of coal is suspended the demand for it becomes importunate, and prices must rise. Or if the supply goes forward, the prices fixed by the confederates must accompany it. The domestic hearth, the furnaces of the iron master and the fires of the manufacturer all feel the restraint, while many dependent hands are paralyzed and hungry mouths are stinted. The influence of lack of supply or a rise in the price of an article of such prime necessity cannot be measured. It permeates the entire mass of the community, and leaves few of its members untouched by its withering blight. Such a combination is more than a contract; it is an offense. * * * In all such combinations where the purpose is injurious or unlawful, the gist of the offense is the conspiracy. Men can often do by the *combination* of many what severally no one could accomplish, and even what when done by one would be innocent. * * * There is a potency in numbers when combined, which the law cannot overlook, where injury is the consequence."

The same principle is announced by the New York Court of Appeals in *Arnot vs. Pittston & Elmyra Coal Co.*, 68 N. Y., 558, in which it is said:

"A combination to effect such a purpose is inimical to the interests of the public, and that all contracts designed to effect such an end are contrary to public policy, and therefore illegal."

In passing upon a like question, the supreme court of Ohio, in *Central Ohio Salt Co. vs. Guthrie*, 35 Ohio St., 666, said:

"It is no answer to say that competition in the salt trade was not in fact destroyed, or that the price of the commodity was not unreasonably advanced. Courts will not stop to inquire as to the degree of injury inflicted upon the public; it is enough to know that the inevitable tendency of such contracts is injurious to the public."

In *Craft vs. McConoughy*, 79 Ill., 346, in passing upon the validity of a combination among grain dealers entered into for the purpose of stifling competition, the supreme court of Illinois said:

"So long as competition was free, the interest of the public was safe. The laws of trade, in connection with the rigor of competition, was all the guaranty the public required, but the secret combination, created by the contract, destroyed all competition and created a monopoly against which the public interest had no protection."

The case of the *People vs. Chicago Gas Trust Co.*, 130 Ill., 268, involved the validity of the organization of a gas corporation which obtained a monopoly in the business of furnishing illuminating gas in the city of Chicago, by buying the stock of four other gas companies. In passing upon the validity of such an organization, the supreme court of Illinois said:

"Of what avail is it that any number of gas companies may be formed under the general incorporation law, if a giant trust company can be clothed with the power of buying up and holding the stock and property of such companies, and, through the control thereby attained, can direct all their operations and weld them into one huge combination?"

These cases, and *Richardson vs. Bull*, 77 Mich., 632, *Santa Clara Mill & Lumber Co. vs. Hayes*, 76 Cal., 387, and *India Bagging Ass'n vs. Kock*, 14 La. Ann., 168, are cited with approval by this court in *Northern Securities Co. vs. United States*, 193 U. S., 197, 339, *et seq.*

Section 168 of the Penal Code of New York makes it a misdemeanor for two or more persons to conspire to commit any act injurious to public health, to public morals, or to trade or commerce, or for the perversion or obstruction of public justice, or the due administration of the law.

In *People vs. Sheldon*, 139 N. Y., 251, an agreement entered into by the coal dealers of Lockport for the purpose of making a uniform price upon anthracite coal in that city, was held to be a misdemeanor under the New York statute, although the price of coal within the city of Lockport had not been increased by such combination.

Mr. Chief Justice Andrews in delivering the opinion of the court, said:

"If a combination between independent dealers, to prevent competition between themselves in the sale of an article of prime necessity, is, in the contemplation of the law, an act inimical to trade or commerce, whatever may be done under and in pursuance of it, and although the object of the combination is merely the due protection of the parties to it against ruinous rivalry, and no attempt is made to charge undue or excessive prices, then the indictment was sustained by proof. * * * But the question here does not, we think, turn on the point whether the agreement between the retail dealers in coal did, as matter of fact, result in injury to the public or to the community in Lockport. The question is, was the agreement, in view of what might have been done under it, and the fact that it was an agreement the effect of which was to prevent competition among the coal dealers, one upon which the law affixes the brand of condemnation."

In *State ex rel. Attorney General vs. Fireman's Fund Ins. Co.*, 152 Mo., 45 (45 L. R. A., 363), the question of the validity of a statute identical in purpose and similar in language to the provisions of the Iowa statute under consideration, came before the supreme court of Missouri for determination.

The fire insurance companies transacting business in Missouri challenged the validity of the statute upon the ground that it violated the provisions of the fourteenth amendment to the Federal Constitution. The statute is too long to be set

out in the argument, and will be found in the opinion of the Missouri court. In passing upon its validity it is said by that court:

"It is claimed that section 30 of Article II of the constitution of Missouri provides that 'no person shall be deprived of life, liberty, or property without due process of law,' and that this act violates that provision, because 'it renders it unlawful for defendants to contract or agree among themselves, or with the agents of other insurance companies, or for their agents to contract and agree among themselves, for the reasonable adjustment and maintenance of rates of premium to be charged for insurance against fire, lightning, or storm in this state.' This is a total misapprehension of the act. It does not prohibit any company, or the agent of any company, from contracting with any person who desires to insure his property upon any terms they two may agree upon. This is the extent and true meaning of the right to contract. It does prohibit any company, by itself or through its agents, contracting with any other company or its agent not to contract with the insured except upon terms which such insurance companies or their agents have previously established. In other words, it protects the company against the temptations of a trust or monopoly by refusing to permit it to strip itself of the power to freely contract, for under the arrangement shown in this case the applicant for insurance is free to contract, but the company and its agent has already limited and qualified its power by its previous contract with another company or its agent. The law has made this provision more out of regard for the otherwise helpless insurer than from tender consideration for the insurance company, but it incidentally preserves what it is here claimed it denies,—the free, unrestrained power to contract by both parties to it. Such laws have not only been adjudged constitutional by the supreme court of the United States (citing cases), and by the United States Court of Appeals (citing cases), but the principles they announce have been expressly sanctioned by the supreme courts of New York, of Pennsylvania, of Ohio, of Kentucky, of Iowa, of Illinois, of Wisconsin, of California, of Texas, and of Louisiana. There is no more merit in this contention than there would be that a law was unconstitutional which prohibited two or more persons from conspiring to commit murder, or burglary, or any other felony. There is no such thing in civilized society as the unrestrained power to contract. Every man surrenders some of

his individual rights when he associates with or becomes a part of any society or government, and the power of the government is complete to legislate so that, while according to every man the fullest possible liberty to do what he pleases with his own, he must not interfere with the similar right of others. This principle underlies and runs through all governments and societies, and is the corner stone of the police power of the state."

In *State ex rel Monnett vs. Buckeye Pipe Line Co.*, 61 Ohio St., 520, the validity of an Ohio statute prohibiting combinations made for the purpose of restricting trade or commerce, or to limit production or increase the price of commodities, was presented to the supreme court of Ohio for determination. In passing upon the power of a state to enact and enforce a statute prohibiting a combination by persons or corporations for the purpose of restricting trade or commerce, or for the purpose of limiting production or increasing the price of any commodity ,the supreme court of Ohio said:

"The contract which we are asked to denounce is not incidental to the sale of property or any interest therein. It does not concern the good will of any business. * * * In the subject of the contract, the interests of the contracting parties are not adverse; they are not even diverse. The agreement, according to the allegations of the petition, has no purpose whatever except to prevent competition in the production, transportation and refining of petroleum, to the end that there may be received from the consumers of its products higher prices than would prevail under the condition of open competition. Counsel for the defendants admit that such a contract is within the inhibitions of the act, but deny the power of the legislature to inhibit it. Laws of this general character were entirely familiar to our English ancestors and to those who framed the American Constitution. In view of the omnipotence of the English parliament, such enactments do not, of course, furnish a standard for the validity of enactments passed by our legislatures, whose powers are subject to defined limitations. They do, however, show that such real or supposed invasion of the interests of the public was a well known subject for the exercise of legislative power. The definite proposition of counsel upon this point is that although the act is an exercise of legislative power, it transcends the provision of the State and Federal Constitutions which ren-

der inviolable the rights of liberty and property, which include the right to make contracts. It would be difficult to place too high an estimate upon these guaranties, and they include the right to make contracts. But it is settled that these guaranties are themselves limited by the public welfare or the exercise of police power. Although the power may not be conclusively defined, its nature and attributes have been the subject of much investigation. In all considerate discussions of the subject, it is conceded that in the exercise of this power, the legislature can prohibit only those uses of property which are hurtful to the public, and the inhibited use must be hurtful in a legal sense.

"That contracts like these are hurtful in that sense has been held in more cases than it would be practicable to cite. They abound throughout nearly three centuries of the development and administration of the common law in England and America. We cite, because of their full consideration of the subject to their direct application to legislation of this character, *United States vs. The Trans-Mo. Freight Association*, 166 U. S., 290; *United States vs. The Joint Traffic Association*, 171 U. S., 505; *United States vs. The Addyston Pipe and Steel Co.*, 54 U. S. App., 723. These cases are applicable since the provisions of the federal anti-trust statute are not substantially different from those of the Ohio act, which are brought under consideration in these cases, and there is no substantial difference between the contracts or constitutional provisions involved. That the contracts there considered were in restraint of commerce between states, served only to bring the subject within federal jurisdiction. The considerations affecting the validity of the legislation are in all respects as applicable here as there. Since the contract alleged in these petitions is for the sole purpose of restraining trade or limiting competition, we find no decision which doubts that they are in a legal sense hurtful to the public. There appear to be differences of opinion respecting the test of the reasonableness of contracts of sale where the good will of a business is in part the subject of the transaction and there are restraints imposed upon the vendor to secure the purchaser in the subject of the sale. But such doubts do not extend to contracts whose only purpose is to impose such restraints. Such contracts have been uniformly held to be unlawful. They cannot be reasonable in a sense which would bring the right to make them within the protection of any guaranty of either the State or Federal Constitution."

In *Stanton vs. Allen,* 5 Denio, 334, an agreement whereby a large portion of the proprietors of boats of certain canals in New York regulated the rates of freight and passage by a uniform scale which was established by a committee selected from among the proprietors, and whereby it was provided that the proprietors' business should be divided in proportion to the number of boats employed by each proprietor, and that members should not engage in similar business outside the association, was held to be illegal upon the grounds that the tendency of such agreement was, (1) to increase prices; (2) to prevent competition.

In *Watson vs. Harlem & N. Y. Nav. Co.,* 52 How Prac., 348, where rival and competing steamboat companies, organized under the laws of the State of New York, acted together and entered into an agreement for the purpose of running their boats upon joint account, thereby making a complete union of the interest of the companies, it was held to be an illegal combination under the New York statute.

It was also held in *Anderson vs. Jett,* 89 Ky., 375, where owners of two competing steamboats entered into an agreement that they would thereafter share in fixed proportions in the net profits of both boats, that such an agreement was invalid under the Kentucky statute.

So where a number of commercial firms entered into an agreement not to sell any India cotton bagging for a specified time, except with the consent of a majority of the combination, the agreement was held to be void under the Louisiana statute in *India Bagging Association vs. Kock,* 14 La. Ann., 164.

In *Craft vs. McConoughy,* 79 Ill., 346, an agreement between certain grain dealers, the object of which was to form a secret combination to suppress competition and enable the parties to control the price of grain, rates of storage, and shipment, was held to be illegal by the Illinois court.

In *Nester vs. Continental Brewing Co.,* 161 Pa. St., 473, a contract, entered into by forty-five brewing firms of the city of Philadelphia for the purpose of regulating and controlling

the price of beer within that city and the adjoining territory, was held to be illegal upon the grounds (1) that it was a combination in restraint of trade tending to destroy competition, and to create a monopoly in an article of daily consumption; (2) that the power given to the pool to arbitrarily fix the price necessarily controlled production and was contrary to public policy.

In *Texas Standard Oil Co. vs. Adoue,* 83 Texas, 650, a contract between five cotton seed oil mills fixing prices of cotton seed and naming the markets wherein each mill was to buy, and guaranteeing certain profits to each mill, was held to be illegal and void for the reasons that the prices paid for cotton seed by the parties to the agreement were arbitrarily fixed without reference to the market, and were changed only by mutual consent; that the selling prices of the products of the mills were arbitrarily fixed, and each party to the agreement was expressly prohibited from selling its products at less than the minimum price so fixed.

In *John D. Parke & Sons Co. vs. Nat. Wholesale Druggist Association,* 50 N. Y. Supp., 1064, a contract between a large number of wholesale druggists and manufacturers of proprietary medicines, by which a combination was formed called the Druggists' Association for Mutual Benefit and Protection, was held to be void because in restraint of trade.

In *People vs. Milk Exchange,* 145 N. Y., 267, it was held that an agreement between a large number of milk dealers and parties engaged in the creamery and milk business in the State of New York, the object of which was to fix the price at which milk should be purchased by the stockholders of the company who were the dealers, was invalid because in violation of the New York statute.

In *Emory vs. Ohio Candle Co.,* 47 Ohio St., 320, an unincorporated association was organized called the Candle Manufacturers' Association, which included the manufacturers of ninety-five per cent of a certain variety of candles in a certain portion of the United States. The purpose of the organization was to increase the price and decrease the manufacture

of candles in the territory covered by the agreement. Each member of the association was required to pay into its treasury two and one-half cents on every pound of candles disposed of on his own account within the territory, but was not bound to operate his factory, and whether he did or not, he received at stated times his portion of the profits of the pool, which was based upon the business that had been done by him in previous years; thus making it to the interest of each member to operate his factory when the price of candles was high, and to remain idle when the price was low. The agreement was by the Ohio court held to be invalid and void under the statute of that state.

So a contract between salt producers, made for the purpose of regulating the price and grades of salt, and binding each member to sell salt only at retail, and to actual consumers at the place of manufacture, and at such prices as may be fixed by the directors of the association from time to time, was held to be void as against public policy and as tending to establish a monopoly and destroying competition in trade, in *Central Ohio Salt Co. vs. Guthrie,* 35 Ohio St., 666.

In *Chapin vs. Brown Bros.,* 83 Iowa, 156, where certain local grocerymen in a small town in Iowa entered into an agreement whereby they pledged themselves to buy no more butter and to take no more butter in trade, except for family use, it was held that such agreement was void because against public policy.

In *Santa Clara Valley Mill & Lumber Co. vs. Hayes,* 76 Cal., 387, a combination among manufacturers of lumber in a certain district of California was effected as follows: One of the companies owning certain saw mills leased all the mills which it could, and, where leases could not be made, it entered into contracts with the parties owning the mills whereby they agreed to make and deliver to the corporation a certain amount of lumber at a certain price, and also agreed not to manufacture and sell any lumber in certain specified counties during the period covered by the agreement to any other party. The organization of the corporation and its contract

with the manufacturers of lumber were held to be void as against public policy.

In *DeWitt Wire Cloth Co. vs. N. J. Wire Cloth Co.*, 14 N. Y. Supp., 277, three corporations and two partnerships engaged in transportation between Chicago and the Atlantic a combination for the purpose of regulating the price of their products. They formed an association and agreed to buy by certain schedule of prices and engaged that they would sell no cloth at less than the prices set forth in such schedule. To insure the observance of the agreement they bound themselves to its performance by heavy penalties. The agreement was held to be in restraint of trade, against public policy, and void.

These decisions of the state courts are not cited as being binding upon this court, and may perhaps not be considered authority. They are referred to for the purpose of showing that statutes of the character of the one in controversy have been enacted by many of the states, and that they have, universally, been held to be valid by the state courts.

The act of congress of July 2, 1890, entitled, An act to protect trade and commerce against unlawful restraints and monopolies, commonly known as the Anti-trust Act, has for its object the same result sought to be attained by the acts of the legislatures of the various states; that is, to prevent combinations which shall smother competition and increase the price of commodities by decreasing the production thereof. The principle involved in the act of congress and that in the acts of the state legislatures is identical.

Within its territory and as to its internal business and commerce, the state, within the limits of the State and Federal Constitution, is supreme.

The trade and commerce among the different states is within the exclusive control of congress under the interstate commerce clause of the Federal Constitution. The difference between the powers which may be exercised by the states, and

those which may be exercised by the general government, is a difference as to the sphere in which the respective powers may be exercised, and not as to the principle involved.

A state statute which abridges the liberty of contract guaranteed by the fourteenth amendment is void for the same reason that an act of congress is void which restricts the liberty of contract guaranteed by the fifth amendment to the Federal Constitution.

The clause of the fifth amendment to the Federal Constitution which declares that no person shall be deprived of life, liberty or property without due process of law, is a constitutional restraint upon the powers of congress, precisely as the like provision contained in the fourteenth amendment is a restraint upon the powers of the state legislatures. The one is applicable alone to the general government; the other to state governments.

The principle that the provisions of the fifth amendment to the Federal Constitution are applicable to the general government, and are not a restriction upon the powers of the states, was early announced by this court in *Barron vs. Baltimore*, 7 Pet., 247, in these words:

"The Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states. Each state established a Constitution for itself, and in that Constitution provided such limitations and restrictions on the powers of its particular government, as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and, we think, necessarily, applicable to the government created by the instrument. They are limitations of power granted in the instrument itself; not of distinct governments, framed by different persons and for different purposes.

"If these propositions be correct, the fifth amendment must

be understood as restraining the power of the general government, not as applicable to the states."

In *Fox vs. State of Ohio,* 5 How., 434, Mr. Justice Daniels, speaking for the court, said:

"The prohibition alluded to as contained in the amendments to the Constitution, as well as others with which it is associated in those articles, were not designed as limits upon the state governments in reference to their own citizens. They are exclusively restrictions upon federal power, intended to prevent interference with the rights of the states, and of their citizens."

The doctrine announced in *Barron vs. Baltimore* was reaffirmed and emphasized in *Withers vs. Buckley,* 20 How., 90.

In *Twitchell vs. Commonwealth,* 7 Wall., 326, Mr. Chief Justice Chase, in referring to the case of *Barron vs. Baltimore,* said:

"And this judgment has since been frequently reiterated, and always without dissent.

"That they were not designed as limits upon the state governments in reference to their own citizens, but exclusively as restrictions upon federal power, was declared in *Fox vs. Ohio,* to be the only rational and intelligent interpretation which these amendments can have."

In *Pumpelly vs. Green Bay Co.,* 13 Wall., 176, it is said by Mr. Justice Miller:

"For though the Constitution of the United States provides that property shall not be taken for public use without just compensation, it is well settled that this is a limitation on the power of the federal government, and not on the states."

In *Spies vs. Illinois,* 123 U. S., 166, Mr. Chief Justice Waite, speaking for the court, said:

"That the first ten articles of amendment were not intended to limit the powers of the state governments in respect to their own people, but to operate on the national government alone, was decided more than half a century ago, and that decision has been steadily adhered to since."

It is unnecessary in this connection to either cite or quote

further authorities upon the question. It is well settled by many decisions of this court that the provisions of the fifth amendment declaring that no person shall be deprived of life, liberty and property without due process of law, operates upon the national government with the same force and with the same effect as the like provision of the fourteenth amendment operates upon the state governments.

It therefore follows, as a logical conclusion, if an act of congress prohibiting unlawful restraints and monopolies does not infringe the provisions of the fifth amendment to the federal constitution, and is valid and enforcible where such combinations and monopolies interfere with interstate commerce, a state statute prohibiting such combinations within the territory of the state and as to the internal trade and commerce of the state, cannot be held invalid because it offends the fourteenth amendment of the Federal Constitution.

The decisions of this court, holding the Sherman act to be valid and enforcible as to all combinations and monopolies in restraint of trade which extinguish competition between persons or corporations engaged in interstate trade or commerce, are, therefore, authority upon the question of the validity of the Iowa statute, and will be briefly referred to in this connection.

In *United States vs. Knight Co.*, 156 U. S., 1, it was held that a contract, amounting to a combination between the American Sugar Refining Co. and four Philadelphia sugar refineries, was not prohibited by the Sherman act, for the reason that it was not in restraint of interstate commerce, and therefore did not fall within the provisions of the act of congress. In delivering the opinion of the court, Mr. Chief Justice Fuller, said:

"All the authorities agree that in order to vitiate a contract of combination, it is not essential that this result should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition."

In *United States vs. Freight Association*, 166 U. S., 290, an

agreement between certain railway companies, designed to prevent competition in carrying freight over their respective lines, was held to be within the provisions of the act of congress, and void. Mr. Justice Peckham, in delivering the opinion of the court, said:

"Competition, free and unrestricted, is the general rule which governs all ordinary business pursuits and transactions of life. Evils as well as benefits result therefrom. In the fierce heat of competition the stronger competitor may crush out the weaker; fluctuations in prices may be caused that result in wreck and disaster; yet, balancing the benefits as against the evils, the law of competition remains a controlling element in the business world."

In *United States vs. Joint Traffic Ass'n*, 171 U. S., 505, a similar agreement between thirty-one railway companies engaged in the manufacture and sale of wire cloth, entered into Coast, was held to be in restraint of trade and within the provisions of the act of congress. Mr. Justice Peckham, speaking for the court, says:

"The prohibition of such contracts may, in the judgment of congress, be one of the reasonable necessities for the proper regulation of commerce, and congress is the judge of such necessity and propriety, unless, in case of a possible gross perversion of the principle, the courts might be applied to for relief."

In passing upon the question whether the Sherman act was in violation of the provisions of the fifth amendment to the Constitution, it is further said:

"Among these limitations and guarantees counsel refer to those which provide that no person shall be deprived of life, liberty or property without due process of law, and that private property shall not be taken for public use without just compensation. The latter limitation is, we think, plainly irrelevant.

"As to the former, it is claimed that the citizen is deprived of his liberty without due process of law when, by a general statute, he is arbitrarily deprived of the right to make a contract of the nature herein involved.

"The case of *Allgeyer vs. Louisiana*, 165 U. S., 578, is cited as authority for the statement concerning the right to con-

tract. In speaking of the meaning of the word 'liberty,' as used in the fourteenth amendment to the Constitution, it was said in that case to include, among other things, the liberty of the citizen to pursue any livelihood or vocation, and for that purpose to enter into all contracts which might be proper, necessary and essential to his carrying out those objects to a successful conclusion.

"We do not impugn the correctness of that statement. The citizen may have the right to make a proper (that is, a lawful) contract, one which is also essential and necessary for carrying out his lawful purposes. The question which arises here is, whether the contract is a proper or lawful one, and we have not advanced a step towards its solution by saying that the citizen is protected by the fifth, or any other amendment, in his right to make proper contracts to enable him to carry out his lawful purposes. We presume it will not be contended that the court meant, in stating the right of the citizens 'to pursue any livelihood or vocation,' to include every means of obtaining a livelihood, whether it was lawful or otherwise. Precisely how far a legislature can go in declaring a certain means of obtaining a livelihood unlawful, it is unnecessary here to speak of. It will be conceded it has power to make some kinds of vocations and some methods of obtaining a livelihood unlawful, and in regard to those the citizen would have no right to contract to carry them on.

"Congress may restrain individuals from making contracts under certain circumstances and upon certain subjects. *Frisbie vs. United States,* 157 U. S., 160.

"Notwithstanding the general liberty of contract which is possessed by the citizen under the Constitution, we find that there are many kinds of contracts which, while not in themselves immoral or *mala in se,* may yet be prohibited by the legislation of the states or, in certain cases, by congress. The question comes back whether the statute under review is a legitimate exercise of the power of congress over inter-state commerce and a valid regulation thereof. The question is, for us, one of power only, and not of policy. We think the power exists in congress, and that the statute is therefore valid."

In determining the meaning of the word "liberty" as used in the Federal Constitution, and as applied to the right of contract, Mr. Justice Peckham in *Addyston Pipe & Steel Co. vs. United States,* 175 U. S., 228, said:

"It has been held that the word 'liberty' as used in the Constitution, was not to be confined to the mere liberty of person, but included among others a right to enter into certain classes of contracts for the purpose of enabling the citizen to carry on his business. *Allgeyer vs. Louisiana*, 165 U. S., 578; *United States vs. Joint Traffic Ass'n*, 171 U. S., 505. But it has never been, and in our opinion ought not to be, held that the word included the right of an individual to enter into private contracts upon all subjects, no matter what their nature and wholly irrespective (among other things) of the fact that they would, if performed, result in the regulation of interstate commerce and in the violation of an act of congress upon that subject."

In *Northern Securities Co. vs. United States*, 193 U. S., 332, it is said:

"That to vitiate a combination, such as the act of congress condemns, it need not be shown that the combination, in fact, results or will result in a total suppression of trade or in a complete monopoly, but it is only essential to show that by its necessary operation it tends to restrain interstate or international trade or commerce, or tends to create a monopoly in such trade or commerce, and to deprive the public of the advantages that flow from free competition."

The doctrine deducible from these cases is that congress, within its proper field of legislation, has power to prevent combinations between persons or corporations, which tend to smother competition, create a monopoly, and to regulate or fix the price of commodities; and that such legislation on the part of congress does not infringe the provisions of the fifth amendment to the Federal Constitution, by which the liberty of contract is guaranteed.

Under the same principles of law it must be held that a state, within its jurisdiction, has power to prohibit combinations which tend to extinguish competition and to fix or regulate the price of any commodity in the state; and that a statute prohibiting such contracts and combinations does not violate the provisions of the fourteenth amendment to the federal Constitution.

These propositions may be taken as finally and definitely settled by the decisions of this court.

As has been shown in a previous division of this argument, the power of a state to enact a statute prohibiting combinations in restraint of trade is a power which extends to and may be exercised in prohibiting such combinations between insurance corporations transacting business in the state.

If a state may legally enact a statute prohibiting combinations which prevent competition in trade, it may, in the exercise of its soverign power, also legally enact a statute which prohibits corporations transacting business within the state from entering into a contract or combination which will tend to extinguish competition in the business of fire insurance.

The power of a state to regulate and control the business of fire insurance within the state being conceded, it follows that the manner of such regulation and the details of statutory enactment must be left to the discretion of the state legislature.

It is not within the province of the courts to determine the method or manner in which the constitutional legislative power of a state shall be exercised. The right to exercise such power is a sovereign right of the state, and its legislature is omnipotent so long as its acts do not infringe upon the federal or state constitution.

By the enactment of the sections of the statute under consideration, the Iowa legislature attempted to prevent a combination between fire insurance companies transacting business in the state. The statute extends to the officers, agents and employees of such companies, and embraces agreements relating to rates to be charged for insurance, amount of commissions to be paid agents, and the manner of transacting the business of fire insurance within the state.

It does not undertake to restrict an insurance company in making contracts with its own officers, agents or employees, or as to the amount of commissions to be allowed agents for procuring insurance; nor does it in the slightest degree restrict or abridge the liberty of such companies, their officers or agents, to enter into fire insurance contracts with persons in the state. These are left to the discretion of the corpora-

tion. It simply prohibits two or more companies, their officers, agents or employees from entering into a contract by which the rates to be charged for insurance, the amount of commissions to be allowed agents, and the manner of transacting the business of fire insurance in the state, shall be agreed upon and fixed by such insurance companies, their officers, or agents.

The power of the state to prohibit combinations of this character cannot be doubted.

Section 1755 prescribes the method by which the auditor of state may ascertain whether a combination, in violation of the provisions of the preceding section, has been entered into between fire insurance companies transacting business in the state.

The power to prohibit carries with it the power to inquire as to a violation of the statute, and to punish for a transgression thereof.

Whether the legislature acted wisely or unwisely in fixing the conditions upon which the business of fire insurance may be transacted in the state, is not a question which this or any any other court can determine. The question of the wisdom of the law rests wholly with the legislature of the state.

It may, however, be very properly said in this connection, that the provisions of the Iowa statute are wise and salutary. In this day of combinations, between all classes of corporations transacting the same character of business, extending from the retail dealers of a city to the gigantic railway systems of the continent, the Iowa legislature demonstrated its wisdom in enacting a statute which prevents a combination between fire insurance corporations transacting business within the state, the effect of which would be to compel the people of Iowa to pay an unreasonable cost for fire insurance.

If the complainants desire to transact the business of fire insurance within the boundaries of the state, they must comply with the provisions of the Iowa statute. Any other rule

would deprive the state of its powers of sovereignty and place the control of its internal affairs in other hands.

Within the limits of the State and Federal Constitutions, the power of the state is supreme. The legislature has not exceeded such limits in enacting the statute under consideration and it must be held to be a valid and constitutional enactment.

Respectfully submitted,

CHAS. W. MULLAN,
Of Counsel for Appellant.

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Supreme Court, U. S.
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Clerk.

ADDITIONAL

Brief and Argument of Appellant

BY CHAS. A. CLARK.

Supreme Court of the United States

OCTOBER TERM, 1905.

No. 50.

BERYL F. CARROLL, AUDITOR OF STATE OF THE STATE OF IOWA, APPELLANT,

vs.

THE GREENWICH INSURANCE COMPANY OF NEW YORK, ET AL., APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF IOWA.

(19,399)

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 50.

BERYL F. CARROLL, AUDITOR OF STATE OF THE STATE OF IOWA, APPELLANT,

vs.

THE GREENWICH INSURANCE COMPANY OF NEW YORK, *et al.*, APPELLEES.

Appeal from the Circuit Court of the United States for the Southern District of Iowa.

On behalf of appellant further authorities are submitted upon the following points:

I.

THE STATUTE ASSAILED IS UNIFORM IN ITS OPERATION.

So far as the Constitution of Iowa is concerned, it may be assumed that this Court will follow the construction placed upon it by the Supreme Court of that State by a long line of decisions. Under the "Uniformity Clauses" of that Constitution it has been held—

That a statute prescribing regulations for actions on insurance policies different from those on other contracts is valid.

Christie *v.* Life, &c., Co., 82 Iowa, 360.

That a method assessing railway companies different from the method of assessing other tax payers is valid.

Central Iowa R. R. Co. *v.* Board, 67 Iowa, 199.

Same as to express and telegraph companies.

U. S. Ex. Co. *v.* Ellison, 28 Iowa, 370.

The statute establishing the liability of railroad companies to employees for negligence of co-employees is valid.

McAunich *v.* M. & M. Ry. Co., 20 Iowa, 338;
Deppe *v.* Ry. Co., 36 Iowa, 52.

Assessing State banks for taxation differently from National banks.

Primghar State Bank *v.* Rerick, 64 N. W. Rep., 801.

This Court has followed the Supreme Court of Iowa in its construction of these "uniform law" clauses of the Constitution of Iowa.

The legislature of Iowa fixed maximum rates for railroads, dividing them into three classes, with separate rates for each class. This Court sustained the statute, and said, Waite, *C. J.*:

"The statute divides the railroads of the State into classes, according to business, and establishes maxi-

mum rates for each class. It operates uniformly on each class, and this is all the Constitution requires. The Supreme Court of the State, in the case of *McAunich* v. *M. & M. Railroad Co.*, 20 Iowa, 343, in speaking of legislation as to classes, said: 'These laws are general and uniform, not because they operate upon every person in the State—for they do not—but because every person who is brought within the relation and circumstances provided for is affected by the law. They are general and uniform in their operation upon all persons in the like situation, and the fact of their being general and uniform is not affected by the number of persons within the scope of their operation.' This act does not grant to any railroad company privileges or immunities which, upon the same terms, do not equally belong to every other railroad company. Whenever a company comes into any class, it has all the 'privileges and immunities' that have been granted by the statute to any other company of that class. * * *

"Whether this is the best that could have been done is not for us to decide. Our province is only to determine whether it could have been done at all and under what circumstances. If it could, the legislature must decide for itself, subject to no control from us, whether the common good requires that it should be done."

Chicago, &c. R. R. Co. *v.* Iowa, 94 U. S., 163–4.

II.

Uniformity Under Fourteenth Amendment.

Here the test of uniformity is practically the same

The reasoning of this Court in the case last cited, and the rule there laid down under the "uniformity" clauses of the Constitution of Iowa, is not different from its reasoning, and the rule laid down by it as to the requisite uniformity under this amendment.

Thus, in a recent and very persuasive case, it was said—opinion by Mr. Justice Day:

> "It is not the purpose of the Fourteenth Amendment, as has been frequently held, to prevent the States from classifying the different subjects of legislation and making different regulations as to the property of different individuals differently situated. The provision of the Federal Constitution is satisfied if all persons similarly situated are treated alike in privileges conferred or liabilities imposed."
>
> Field *v.* Barber Asphalt Co., 194 U. S., 621–2.
> Citing Kentucky R. R. Tax Cases, 115 U. T., 321.
> Hayes *v.* Missouri, 120 U. S., 68.
> Magown *v.* Ill., &c., Bank, 170 U. S., 283.
> Gulf, &c., Railroad Co. *v.* Ellis, 165 U. S., 150.

Under these decisions it seems idle to argue that the classification in the statute assailed is such as to be open to the objection of such want of uniformity as to "deny to appellees the equal protection of the law."

III.

The Right of Contract.

> "The right of contract may be subjected to restraints demanded by the safety and welfare of the State."
>
> St. Louis, &c., Ry. *v.* Paul, 173 U. S., 404.
> Knoxville Iron Co. *v.* Harbinson, 183 U. S., 13–22.

The right to contract for a harmful combination is not to be upheld.

Northern Securities Co. *v.* U. S., 193 U. S., 197.

So as to contracts to suppress competition.

Waters-Pierce Oil Co. *v.* Texas, 177 U. S., 42.
National Cotton Oil Co. *v.* Texas, 197 U. S., 115.

The rule is recognized in Lochner *v.* New York, 198 U. S., 45; but it is held by the majority opinion not to apply to restrictions upon the occupation and employment of bakers as a class.

As to other occupations, eight-hour laws have been sustained, although they necessarily limited the right of contract.

Holden *v.* Hardy, 169 U. S., 366.
Atkins *v.* Kansas, 191 U. S., 223.
And see Mugler *v.* Kansas, 123 U. S., 661.

And so of laws prohibiting the manufacture and sale of colored oleomargarine, a healthful food product, which remained wholesome after the coloring. It was enough that it was an imitation of genuine butter. The rights of occupation, employment and contract were clearly taken away by this statute.

Capital City Dairy Co. *v.* Ohio, 183 U. S., 238.
McCray *v.* U. S., 195 U. S., 62.

Nor can the right of contract be sustained as to a combination to injure the business of another.

Aikens *v.* Wisconsin, 195 U. S., 194.

The final word as to the case at bar seems to have been

said in the persuasive case where the Kansas act against combinations to prevent competition, etc., was sustained by this Court, where local grain buyers in a small town entered into a joint combination regulating the purchase of grain by them.

The Court referred to—

U. S. *v.* Reexe, 92 U. S., 214;
Trade-mark Cases, 100 U. S., 82;
U. S. *v.* Harris, 106 U. S., 629;
Baldwin *v.* Franks, 120 U. S., 678.

And it was said, opinion by Mr. Justice Brewer:

"Undoubtedly there is a certain freedom of contract which can not be destroyed by legislative enactment. In pursuance of that freedom parties may seek to further their business interests, and it may not always be easy to draw the line between those contracts which are beyond the reach of the police power and those which are subject to prohibition or restraint. But a secret arrangement by which under penalties an apparently existing competition among all the dealers in a community in one of the necessaries of life is substantially destroyed, without any merging of interests through partnership or incorporation, is one to which the police power extends."

And it was added:

"As said by the Supreme Court of the State concerning the defendant's criticism of the breadth of this statute (p. 247):

"'He can not be heard to object to the statute merely because it operates oppressively upon others.

> The hurt must be to himself. The case, under appellant's contention as to this point, is not a case of favoritism in the law. It is not a case of exclusion of classes who ought to have been included, the leaving out of which constitutes a denial of the equal protection of the law, but it is the opposite of that. It is a case of the inclusion of those who ought to have been excluded. Hence, unless appellant can show that he himself has been wrongfully included in the terms of the law, he can have no just ground of complaint. This is fundamental and decisively settled. City of Kansas City *v.* Railway Co., 59 Kansas, 427, affirmed under the title Clark *v.* Kansas City, 176 U. S., 114; Supervisors *v.* Stanley, 105 U. S., 305, 311; Pittsburg, &c., R. Co. *v.* Montgomery, 152 Indiana, 1.'"
>
> Smiley *v.* Kansas, 196 U. S., 456–7.

The Supreme court of Iowa takes the same view of a combination of local dealers to suppress competition in butter. Such combination and the contract by which it was established was held void as against sound public policy.

Chapin *v.* Brown, 83 Iowa, 156.

The statute complained of is in accordance with the general public policy and statutes of Iowa. Thus, in 1890, six years prior to that statute, the legislature prohibited combinations against competition by enacting a statute, now found in the Code of 1897, as follows:

> Sec. 5060. Pools and trusts.—Any corporation or ganized under the laws of this or any other State or county transacting or conducting any kind of busi-

ness in this State, or any partnership, association of individual, creating, entering into or becoming a member of or a party to any pool, trust, agreement, contract, combination, confederation or understanding with any other corporation partnership, association or individual, to regulate or fix the price of any article of merchandise or commodity, or to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State, shall be guilty of a conspiracy. (23 G. A., ch. 28, sec. 1.)

Sec. 5061. Corporation not to enter.—No corporation shall issue or own trust certificates, and no corporation, nor any agent, officer, employee, director or stockholder of any corporation, shall enter into any combination, contract or agreement with any person or corporation, or with any stockholder or director thereof, for the purpose of placing the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with intent to limit or fix the price or lessen the production or sale or any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article. (Same, sec. 2.)

Sec. 5062. Penalty.—Any corporation, company, firm or association violating any of the provisions of the two preceding sections shall be fined not less than one per cent. of its capital or amount invested in such corporation, company, firm or association, nor more than twenty per cent. of the same; and any president, manager, director, officer, agent or receiver of any corporation, company, firm or association, or any member of any corporation, com-

pany, firm or association, or any individual, found guilty of a violation thereof, shall be fined not less than five hundred nor more than five thousand dollars, or be imprisoned in the county jail not to exceed one year, or both. (Same, sec. 3.)

Sec. 5063. Contracts void.—All contracts or agreements in violation of any provisions of the three preceding sections shall be void. (Same, sec. 4.)

Sec. 5064. Defense.—Any purchaser of any article or commodity from any individual, company, or corporation transacting business contrary to any provisions of the four preceding sections shall not be liable for the price or payment thereof, and may plead such provisions as a defense to any action for such price or payment. (Same, sec. 5.)

Sec. 5065. Forfeiture of charter.—Any corporation created or organized by or under the law of this State which shall violate any provision of the five preceding sections, shall thereby forfeit its corporate right and franchise, as provided in the next section. (Same, sec. 6.)

Sec. 5066. Notice by Secretary of State.—The Secretary of State, upon satisfactory evidence that any company or association of persons incorporated under the laws of this State have entered into any trust, combination or association in violation of the provisions of the six preceding sections, shall give notice to such corporation that, unless it withdraws from and severs all business connection with said trust, combination or association, its articles of incorporation will be revoked at the expiration of thirty days from date of such notice. (Same, sec. 7.)

Sec. 5067. Proceedings; inquiry by grand jury.—

County attorneys, in their counties, and the Attorney-General shall enforce the provisions of a public nature in the seven preceding sections, and any county attorney or the Attorney-General securing a conviction under the provisions thereof shall be entitled, in addition to such fee or salary as by law he is allowed for such prosecution, to one-fifth of the fine recovered. When the Attorney-General and county attorney act in conjunction in the prosecution of any action under such provisions, they shall be entitled to one-fourth of the fine recovered, which they shall divide equally between them, where there is no agreement to the contrary. It shall be the duty of the grand jury to inquire into and ascertain if there exists any pool, trust or combination within their respective counties. (Same, sec. 8.)

And, as pointed out in the argument for appellees, the Supreme Court of Iowa has decided that fire insurance is a "commodity" under this statute, and, therefore, fire insurance companies are subject to its terms and provisions.

Beechley v. Mulville, 102 Iowa, 602.

Under the foregoing sections the charter of an Iowa fire insurance company would be forfeited by entering into a prohibited combination, while the license of a foreign company, offending in like manner, would remain unaffected. Nor could foreign insurance companies entering into a combination outside of Iowa and charging in Iowa the rates previously fixed by such combination, be punished criminally either under that, or the statute specially assailed in the case at bar. It was un-

doubtedly this condition which led the legislature to provide for the revocation of their licenses, and it seems obvious that this was a fair and reasonable regulation for protecting the people of Iowa, where no other remedy was in force or could very well be put in force.

IV.

Regulation of Foreign Corporations.

This brings us to the right of the State to regulate foreign corporations doing business within its limits. The law, it is submitted, should be enforced as such reasonable regulation, regardless of all that has been urged against it. The decisions of this Court are not uncertain upon this question.

A state may impose any restrictions it may see fit upon foreign corporations.

Fritts v. Palmer, 132 U. S., 288.
Allgeyer v. Louisiana, 165 U. S., 583.
Dayton Coal Co. v. Barton, 183 U. S., 24.
Farmer's Ins. Co. v. Dabney, 194 U. S., 304.

And may exclude them altogether unless restrained by some other provision of the Federal Constitution than the Fourteenth Amendment.

Silver Horn &c. Co. v. New York, 143 U. S., 314.
Ducat v. Chicago, 10 Wall, 415.

The rule sustained in a case involving right of contract affecting competition under a Texas statute.

Waters-Pierce Oil Co. v. Texas, 177 U. S., 42.

And see, construing statutes of Missouri and California, regulating insurance.

Orient Ins. Co. *v.* Daggs, 172 U. S., 557.

Hooper *v.* California, 155 U. S., 648.

A very late case as to revoking such licenses for entering into combinations to suppress competition, quite in point and quite conclusive, is—

National Oil Company *v.* Tex., 197 U. S., 115.

It is to be remembered that all statutes punishing criminally are special in character, and are not within the "uniformity" clauses of constitutions.

Martin *v.* Blattner, 86 Iowa, 286.

The case must, therefore, be a very clear one in order to warrant denying to a State the exercise of the police power within its own jurisdiction. It would seem to be an inevitable conclusion that a law to protect its people from combinations and conspiracies to suppress competition in, and put up the prices of, fire insurance, a prime necessity in business life, should be unhesitatingly sustained.

It is not enough to sustain the injunction against the entire law that cases may arise as to which the law would be held bad. *If, on the contrary, any case may arise where the law should be sustained,* then the action of the court below was error, and should be reversed.

V.

The Statutes Quoted.

Sections 1637 to 1639 of Code of Iowa, quoted in ap-

pellees' argument, pp. 14 and 15, have no bearing upon this case. The bill does not allege that a single one of appellees was not transacting business in Iowa prior to 1886, and does not show that any one of them have paid the fees or taken out the permit required by those sections. These sections are from Ch. 1, Title IX, of the Code.

The sections assailed are from Ch. 4 of Title IX. Going to that chapter, which relates to fire insurance companies, its provisions, so far as material to this case, are:

By section 1700, domestic fire insurance companies must have a permit, which must be renewed annually.

"Section 1715. Certificate refused. The auditor of State shall withhold his certificate or permission of authority to do business from any company neglecting or failing to comply with the provisions of this chapter." This covers both domestic and foreign corporations.

Sec. 1724 is printed in appellees argument, pp. 16 and 17, and requires an annual certificate from the auditor for foreign corporations.

By section 1725 every agent of every company must have a certificate of authority from the State Auditor.

By section 1735 the certificate of a foreign company is required to be revoked by the State Auditor, and notice given when it is found to be in an unsound condition.

By section 1737 all companies are required to publish annually in two newspapers of Iowa the certificate of the State Auditor that they have in all respects complied with the law of the State relating to insurance.

By section 1747 every insurance company doing busi-

ness in the State is required, when necessary, to change its charter and by-laws to conform to the provisions of the chapter and other laws of Iowa.

Sec. 1752 regulates the fees to be paid by both domestic and foreign companies on beginning business and annually thereafter.

This section is important because it covers the only fees which the bill shows appellees to have paid.

Taking these sections as a whole, in connection with the sections assailed, the regulations imposed upon fire insurance companies are eminently reasonable and just, and ought to be sustained as fair protection to the people of the State.

CHAS. A. CLARK,
Of Counsel for Appellant.

No. 50. OF OCTOBER TERM, 1905.

FILE COPY.

IN THE

Supreme Court of the United States.

Office Supreme Court U. S.
FILED
NOV 7 1904
JAMES H. McKENNEY,
Clerk.

IN EQUITY.

Beryl F. Carroll, Auditor of State of the State of Iowa, Appellant,

vs.

The Greenwich Insurance Company of New York *et al.*, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

STATEMENT, BRIEF AND ARGUMENT FOR APPELLEES.

(File No. 19,399.)

JOHN G. JOHNSON,
GEORGE H. CARR,
JAMES C. DAVIS,
Attorneys for Appellees.

Allen, Lane & Scott, Prs., Phila.

IN THE SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

Beryl F. Carroll, Auditor of State of the State of Iowa, Appellant,

vs.

The Greenwich Insurance Company of New York et al., *Appellees.*

October Term, 1905.

No. .

APPELLEES' BRIEF.

I. STATEMENT OF FACTS.

The Greenwich Insurance Company, a corporation and citizen of the State of New York, in connection with some twelve other insurance corporations, such corporations having been created by the laws of the States of New York, Pennsylvania and Connecticut and Great Britain and Canada, as complainants, on the 12th of March, 1903, filed their bill in equity in the Circuit Court of the United States, in and for the Southern District of Iowa, against Beryl F. Carroll, Auditor of State, of the State of Iowa, and in such bill alleged their corporate existence and citizenship, and further alleged that for many years prior to the filing of the bill these several companies had made application in due form to be permitted to do business in the State of Iowa, and, in connection with such applications, had filed with the Auditor

of State written instructions, under seal, authorizing said Auditor to acknowledge service of notice, and further filed with said Auditor a certified copy of their charters and articles of incorporation; had further filed detailed statements of their capital stock, and such further statements as are provided for by the statutes of the State of Iowa; had paid all fees required by law to the State of Iowa, and had thereupon been permitted to carry on the business of fire insurance companies within the State of Iowa.

It was further alleged that each of said complainants had for many years established and maintained, with the specific consent of the authorities of the State of Iowa, extensive agencies in said State, and had built up and maintained an extensive business therein, and now have a large number of outstanding contracts of insurance upon property and with citizens of the State of Iowa.

It was further alleged that there were not less than eighty-five foreign fire insurance companies doing business in the State of Iowa.

It was further charged that by section 1754 of the Code of Iowa, it is provided:—

> "It shall be unlawful for two or more fire insur-
> "ance companies doing business in this State, or for
> "the officers, agents or employees of such companies,
> "to make or enter into any combination or agree-
> "ment relating to the rates to be charged for insur-
> "ance, the amounts of commissions to be allowed
> "agents for procuring the same, or the manner of
> "transacting the fire insurance business within this
> "State, and any such company, officer, agent or em-
> "ployee violating this provision shall be guilty of a
> "misdemeanor."

That by section 1755 of the Code it is made the duty of the Auditor of State to summarily summon before him for examination, under oath, any officer or agent of any such company suspected of violating the provision of said section 1754, and, upon complaint being made in

writing by two or more residents of the State, charging any company, under oath, with violating the provisions of said section, it is made the duty of such Auditor to summon before him any officer, agent, or employee of such company, and if, upon examination, he shall determine that such company is guilty of a violation of said section, or if any officer, agent or employee so summoned shall fail to appear, to issue an order revoking the authority of any such company to transact business within this State, and providing that thereafter such company shall not be permitted to do business in the State within a period of one year.

Section 1754 further provides that, upon conviction, such company shall be subject to a penalty of not less than one hundred or more than five hundred dollars.

It is further charged that fire insurance companies many years ago, in this and other commercial countries, began to collect and preserve full, careful and accurate accounts of fires, their cause, origin and all other attendant circumstances, and to subject the mass of data to analysis and classification for the purpose of ascertaining with a reasonable degree of certainty what was the general average of fires and the losses arising therefrom with the different classes of risks, whereby it became possible to ascertain, and was ascertained, what was the real, true and fair value of risks taken and assumed by parties who insure property against losses by fire.

It was further charged that, in doing business in the State of Iowa, the complainant companies, and other fire insurance companies, are confronted with new and varying conditions, all of which affect the value of risks of fire insurance, and an examination of these conditions, relating to the method of constructing buildings, the material of which they are composed, their location and consequent exposure to fire from adjacent property, the kind of business carried on in said buildings, the fire protection in the various towns and cities of the State, and an almost infinite variety of conditions bearing on loss by fire, are necessary in order that it may be

ascertained what is the real, true and fair value of risks of fire insurance to be taken and assumed by companies issuing contracts of fire insurance in this State.

It was further alleged that it is essential that such companies be permitted to avail themselves not only of their own experience but of the experience of other fire insurance companies, and that all data obtainable as to the cause, origin and circumstances connected with fires, under the varying circumstances by which they were surrounded, be gathered together in one mass and subjected to scientific analysis and classification, so that it may be ascertained with a reasonable degree of certainty what is the general average of fires, and the extent of losses therefrom, arising out of certain classes of risks, and thereby the real, true and fair value of such risks definitely and scientifically ascertained.

It was further charged that, in order to ascertain the true and equitable rates to be charged for the different classes of insurance, it is necessary that complainants and other fire insurance companies doing business in Iowa combine their experiences in the manner aforesaid, and deduce therefrom the just and true value of the several classes of risks, and complainants, and those for whom they sue, are desirous, when, as the result of their combined experiences, the true value of risks are ascertained, to charge such sum for the various classes of risks as shall represent and be the real, true and fair value of the risks taken and assumed by them.

It was further charged that complainants and other fire insurance companies are compelled to employ some person to ascertain from such experience as is obtainable the fair and just value of the risks to be assumed, and, owing to the limited experience of each company, a much more accurate rate can be ascertained if drawn from the combined experiences of all of the various companies doing business in Iowa; that the expense of such method of ascertaining the true value of the risk to be assumed would be greatly decreased if the companies were able to obtain these combined experiences by having the matter placed in the hands of some person em-

ployed by all of the companies for the purpose of ascertaining the just and equitable value of the risks to be assumed by them.

It was further charged (paragraph 10 of the bill) that complainants are desirous of combining their experiences and subjecting the data gathered by them to a person to be employed by complainants and other fire insurance companies similarly situated for the purpose of analyzing and classifying such experiences, to the end that the just and equitable value of the charges to be made for various risks of insurance be established; that complainants are also desirous of conferring, consulting and agreeing as to what classes of risks are non-insurable, as to what shall regarded as moral hazards, and what shall be regarded as physical hazards, as to how various risks shall be classified, and as to other matters relating to the manner of doing business, to the end that the most efficient services can be rendered to property owners and citizens of Iowa desiring fire insurance, and to the end that just and equitable rates of insurance may be ascertained upon the various classes of risks, all of which would be beneficial not only to complainants and other fire insurance companies doing business in the State of Iowa, but will also be beneficial and conducive to the welfare of the people of the State.

It is further charged, upon information and belief, that, if complainants proceed in the manner above set out to determine just, fair and reasonable rates of insurance, and proper methods of conducting business, the defendant, the Auditor of State, will proceed, under the provisions of sections 1754 to 1757 of the Code of Iowa, to attempt to deprive complainants of their right to do business in the State of Iowa, destroy the business which they have established, create a multiplicity of suits, and do great and irreparable injury to complainants and their business.

It is further charged:—

First.—That said section 1754, so far as it prohibits any combination or agreement relating to the rates to

be charged for insurance, the amount of commissions to be allowed agents for procuring the same, and the manner of transacting fire insurance within the State, is void and in violation of section 6 of article I. of the Constitution of the State of Iowa, which provides:—

> "All laws of a general nature shall have a uniform "operation; the general assembly shall not grant to "any citizen or class of citizens, privileges or immu- "nities, which upon the same terms shall not equally "belong to all citizens."

Second.—That said several sections of the Code of Iowa, 1754 to 1757, are in violation of article XIV. of the amendments to the Constitution of the United States, wherein it is provided:—

> "No State shall deprive any person of life, liberty, "or property, without due process of law, nor deny "to any person within its jurisdiction the equal pro- "tection of the laws."

Third.—That such statutes are in violation of section 10 of article I. of the Constitution of the United States, which provides that no State shall pass a law impairing the obligation of contracts.

Proper appearance was made in this proceeding, and the defendant, appearing by his counsel, the Attorney-General, demurred to the bill of complaint, which demurrer, although stating several grounds, was practically upon the ground that the statements of the bill did not entitle the complainants to any relief.

The demurrer was submitted to the Circuit Court, and, upon full hearing, was overruled. The written opinion of the Circuit Court is reported in case of Greenwich Insurance Company *et al. vs.* Carroll, 125 Fed., 121.

The complainant elected to stand upon the demurrer, and final decree in the Circuit Court was rendered, enjoining defendant, as Auditor of State, and his successors in office, from enforcing the provisions of the sections

above referred to, the lower court having determined that such statutes were in violation of the Fourteenth Amendment to the Constitution of the United States.

II. BRIEF OF ARGUMENT.

I.

THE FEDERAL COURT IN EQUITY HAS JURISDICTION TO PASS UPON THE VALIDITY OF A STATUTE CLAIMED TO BE VOID AS IN VIOLATION OF THE CONSTITUTION, WHEN THE ENFORCEMENT OF SUCH STATUTE WILL CREATE A MULTIPLICITY OF SUITS OR CAUSE GREAT AND IRREPARABLE INJURY, AND HEREIN AN ACTION OF THIS CHARACTER IS NOT AN ACTION AGAINST THE STATE.

Osborn *vs.* United States Bank, 9 Wheaton, 738;
Pennoyer *vs.* McConnaughy, 140 U. S., 1;
Scott *vs.* Donald, 165 U. S., 107;
City of Hutchinson *vs.* Beckham, 118 Fed., 399 (Eighth C. C. A.).

II.

CORPORATIONS EQUALLY WITH INDIVIDUALS MAY INVOKE THE AID OF THE FEDERAL CONSTITUTION, BECAUSE THEY ARE PERSONS WITHIN THE MEANING OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The Acts whose constitutionality is attacked are not made conditions to corporate admission within the State, or to corporate existence.

Santa Clara County *vs.* Southern Pacific Ry., 118 U. S., 394;
Pembina Mining Co. *vs.* Pennsylvania, 125 U. S., 181-189;
Missouri Pacific Ry. *vs.* Mackey, 127 U. S., 205;
M. & St. L. Ry. *vs.* Herrick, 127 U. S., 210;

M. & St. L. Ry. *vs.* Beckwith, 129 U. S., 26;
Charlotte Railway *vs.* Gibbes, 142 U. S., 386;
Covington Turnpike Co. *vs.* Sandford, 164 U. S., 578;
Gulf, Colorado & Santa Fé Ry. *vs.* Ellis, 165 U. S., 150;
Ins. Co. *vs.* Morse, 20 Wallace, 451;
Cargill Co. *vs.* Minn., 180 U. S., 452;
N. Y. Ins. Co. *vs.* Smith, 41 S. W., 687.

Iowa statutes which especially provide for foreign corporations doing business in Iowa, sections 1637-1639, Code of 1897. Special provisions as to foreign insurance companies doing business in Iowa, sections 1721-1725, Code of 1897.

III.

THE LEGISLATURE OF A STATE, UNDER THE GUISE OF PROTECTING PUBLIC INTERESTS, MAY NOT ARBITRARILY INTERFERE WITH PRIVATE BUSINESS, OR IMPOSE UNUSUAL AND UNNECESSARY RESTRICTIONS UPON LAWFUL OCCUPATIONS.

Lawton *vs.* Steele, 152 U. S., 133;
Allgeyer *vs.* Louisiana, 165 U. S., 578;
Lochner *vs.* New York, 25 S. C. R., 539;
State *vs.* Kreutzberg, 90 N. W., 1098 (Wis.)

IV.

UNDER THE GUISE OF POLICE REGULATION THE RIGHTS OF PERSONS AND PROPERTY CANNOT BE INVADED BY LEGISLATIVE ACTION, AND WHEN SUCH ACTION TAKES AWAY THE PROPERTY OF A CITIZEN, OR INTERFERES WITH HIS PERSONAL LIBERTY, IT IS THE PROVINCE OF THE COURTS TO DETERMINE WHETHER IT IS AN APPROPRIATE REMEDY FOR THE PRESERVATION OF THE SAFETY AND WELFARE OF SOCIETY.

Ritchie *vs.* People, 155 Ill., 98; 40 N. E., 454;
Bessette *vs.* People, 193 Ill., 334; 62 N. E., 219;

In re Jacobs, 98 N. Y., 98-107;
People *vs.* Marx, 99 N. Y., 377; 2 N. E., 29;
People *vs.* Gillson, 109 N. Y., 389; 17 N. E., 343.

V.

REASONABLE CONTRACTS IN RESTRAINT OF TRADE ARE NOT VOID OR AGAINST PUBLIC POLICY. THIS IS ESPECIALLY TRUE WHERE THE SUBJECT OF THE CONTRACT IS NOT A PRIME NECESSITY OR STAPLE OF COMMERCE.

Oregon Steam Navigation Co. *vs.* Winsor, 20 Wall., 69;
Fowle *vs.* Park, 131 U. S., 97;
Chicago Railway Co. *vs.* Pullman Co., 139 U. S., 89;
Northern Securities Co. *vs.* United States, 193 U. S., 361;
Smiley *vs.* Kansas, 196 U. S., 454;
Central Shade Roller Co. *vs.* Cushman, 143 Mass., 353; 9 N. E., 629;
Herriman *vs.* Menzies, 115 Cal., 16; 35 L. R. A., 318;
Manchester & L. R. R. *vs.* Concord, 20 Atl., 385.

VI.

ISSUING POLICIES OR CONTRACTS OF INSURANCE IS NOT COMMERCE.

Paul *vs.* Virginia, 8 Wall., 168-183;
Nathan *vs.* Louisiana, 8 Howard, 73;
Insurance Co. *vs.* Massachusetts, 10 Wall., 566;
Doyle *vs.* Insurance Co., 94 U. S., 535;
Philadelphia Fire Assn. *vs.* New York, 119 U. S., 110;
Queen Insurance Co. *vs.* State, 86 Texas, 250; 24 S. W., 397-404.

VII.

CASES IN WHICH LEGISLATION HAS BEEN HELD TO BE IN CONTRAVENTION OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES (*a*) WHERE THE CLASSIFICATION HAS BEEN ONE OF ARBITRARY SELECTION; (*b*) WHERE THE LIBERTY OF CONTRACT HAS BEEN ARBITRARILY AND WITHOUT JUST CAUSE INVADED.

Cooley on Constitutional Limitations (5th ed.), sections 484-485-486;

Cooley on Constitutional Limitations (6th ed.), pages 481-483;

Allgeyer *vs.* Louisiana, 165 U. S., 578;

Gulf Railway Co. *vs.* Ellis, 165 U. S., 150;

Cotting *vs.* Kansas City Stock Yards, 183 U. S., 79;

Connelly *vs.* Sewer Pipe Co., 184 U. S., 540;

Lochner *vs.* New York, 25 S. C. R., 539;

State *vs.* Haun, 61 Kan., 504; 59 Pac., 341;

Frorer *vs.* People, 141 Ill., 171; 31 N. E., 397; 16 L. R. A., 495;

State *vs.* Goodwill, 33 West Va., 179-182; 10 S. E., 285; 6 L. R. A., 623;

State *vs.* Fire Creek Coal Co., 33 West Va., 188; 6 L. R. A., 359;

State *vs.* Loomis, 115 Mo., 307-315; 22 S. W., 350; 21 L. R. A., 789;

Godcharles *vs.* Wigeman, 113 Pa. St., 431-437; 6 Atl., 354;

Dibrell *vs.* Morris Heirs, 15 S. W., 87-95;

State *vs.* Kreutzberg, 90 N. W., 1098 (Wis.);

Republic Iron & Steel Co. *vs.* State, 66 N. E., 1006 (Ind.);

Vanzunt *vs.* Waddell, 2 Yerger, 260-270;

Millett *vs.* People, 117 Ill., 294; 7 N. E., 631-634;

Ritchie *vs.* People, 155 Ill., 98; 40 N. E. 454; 29 L. R. A., 79;

Harding *vs.* People, 160 Ill., 459; 43 N. E., 624; 32 L. R. A., 445;

Eden *vs.* People, 161 Ill., 296; 43 N. E., 1108; 32 L. R. A., 659;
Chicago *vs.* Netcher, 183 Ill., 104; 48 L. R. A., 261; 55 N. E., 707;
Bailey *vs.* People, 190 Ill., 28; 54 L. R. A., 838;
Johnson *vs.* Railway, 43 Minn., 222; 45 N. W., 156; 8 L. R. A., 419;
Sutton *vs.* State, 96 Tenn., 696; 36 S. W., 697; 33 L. R. A., 589;
State *vs.* Garbroski, 111 Iowa, 498;
State *vs.* Jackman, 42 L. R. A., 438 (N. H.);
South & North Alabama Ry. *vs.* Morris, 65 Ala., 193-199;
Chicago & St. Louis Ry. *vs.* Moss, 60 Miss., 641;
Wilder *vs.* Chicago & West Michigan Ry., 70 Mich., 382-384;
St. Louis Railway *vs.* Williams, 49 Ark., 492; 5 S. W., 883;
San Antonio Railway *vs.* Wilson, 19 S. W., 910;
Wallace *vs.* Railway, 94 Ga., 732; 22 S. E., 579;
New York Life Ins. Co. *vs.* Smith, 41 S. W., 680;
Street *vs.* Varney Electrical Co., 61 L. R. A., 155;
People *ex rel.* Rodgers *vs.* Color, 166 N. Y., 1; 52 L. R. A., 814; 59 N. E., 716.

III. ARGUMENT.

I. JURISDICTION.

The bill recites the diverse citizenship of the parties complainants, all being corporations organized and existing by authority of other States, or foreign countries, than the State of Iowa, the defendant being a citizen and resident of the State of Iowa. The amount in controversy is alleged to be in excess of $2000, and the construction of the Federal Constitution is directly involved.

This court has frequently recognized the propriety of testing the constitutionality of a law in proceedings sim-

ilar to the one at bar. The bill charges fully the necessity on the part of the complainants to exercise privileges and rights prohibited by law; the apprehension on their part, that if such rights and privileges are exercised, the law will be enforced; and that the enforcement of such law will create a multiplicity of suits and result in irreparable injury to complainants. Under these circumstances Federal courts have not hesitated to assume jurisdiction of such controversies.

In case of Osborn *vs.* United States Bank, 9 Wheaton, 738, this court, by Chief Justice Marshall, determined the constitutionality of a statute of the State of Ohio which sought to deprive the Bank of the United States of the right and privilege of doing business in the State of Ohio by levying upon said bank annual taxes for each office of the bank in the State of Ohio in the sum of $50,000, an amount which, if levied, would be prohibitive. The question of jurisdiction, and the right to hear and determine such controversy, was fully considered at paragraphs 5 and 6 of the opinion, and, in discussing the question as to whether or not, upon the allegations of the bill, the Auditor would execute the law, the court said:—

> "The appellants allege that the original bill con-
> "tains no allegation which can justify the application
> "for an injunction, and treat the declarations of
> "Ralph Osborn, the Auditor, that he should execute
> "the law, as the light and frivolous threats of an indi-
> "vidual, that he would commit an ordinary trespass.
> "But surely this is not the point of view in which the
> "application for an injunction is to be considered.
> "The legislature of Ohio had passed a law for the
> "avowed purpose of expelling the Bank from the
> "State; and had made it the duty of the Auditor to
> "execute it as a ministerial officer. He had declared
> "that he would perform this duty. The law, if exe-
> "cuted, would unquestionably effect its object, and
> "would deprive the Bank of its chartered privileges,
> "so far as they were to be exercised in that State. It
> "must expel the Bank from the State; and that is,
> "we think, a conclusion which the court might right-

"fully draw from the law itself. That the declara-
"tions of the Auditor would be fulfilled did not admit
"of reasonable doubt. It was to be expected that a
"person continuing to hold an office would perform
"a duty enjoined by his government, which was com-
"pletely within his power. This duty was to be re-
"peated until the Bank should abandon the exercise
"of its chartered rights."

At page 842, in determining that a proceeding asking for an injunction was an appropriate remedy, the court said, at the conclusion of a full discussion of this subject:—

"The same conservative principle which induces
"the court to interpose its authority for the protec-
"tion of exclusive privileges, to prevent the com-
"mission of waste, even in some cases of trespass, and
"in many cases of destruction, will, we think, apply
"to this."

See also—

Pennoyer *vs.* McConnaughy, 11 S. C. R., 699; 140 U. S., 1;
Scott *vs.* Donald, 17 S. C. R., 265; 165 U. S., 107;
City of Hutchinson *vs.* Beckham, 118 Fed., 399 (Eighth C. C. A.).

II. CORPORATIONS, EQUALLY WITH NATURAL PERSONS, HAVE THE RIGHT TO INVOKE THE PROTECTION OF THE CONSTITUTION. THE OBSERVANCE OF THE LAWS IN CONTROVERSY WAS NOT MADE A CONDITION OF THE RIGHT TO DO BUSINESS IN IOWA.

The complainants in this case, while organized under jurisdictions outside of the State of Iowa, are doing business in the State not alone with permissive authority or acquiescence, but upon direct invitation and specific authority granted by virtue of statutory enactment, which, when complied with, gives to foreign corporations all of the rights, privileges, and protection to which corpora-

tions organized under the laws of the State of Iowa would be entitled.

Section 1637 of the Code of 1897 provides:—

"Any corporation for pecuniary profit, other than "for carrying on mercantile or manufacturing busi- "ness, organized under the laws of another State, or "of any Territory of the United States, or of any for- "eign country, which has transacted business in the "State of Iowa since the first day of September, "1886, or desires hereafter to transact business in "this State, and which has not a permit to do "such business, shall file with the Secretary of "State a certified copy of its articles of incorpora- "tion duly attested, accompanied by a resolution of "its board of directors or stockholders authorizing "the filing thereof, and also authorizing service of "process to be made upon any of its officers or agents "in this State engaged in transacting its business, "and requesting the issuance to such corporation of "a permit to transact business in this State; said "application to contain a stipulation that such per- "mit shall be subject to the provisions of this chap- "ter. Before such permiit is issued, the said corpora- "tion shall pay to the Secretary of State the same "fee required for the organization of corporations in "this State, and if the capital of such corporation is "increased, it shall pay the same fee as is in "such event required of corporations organized "under the law of this State. Any corporation trans- "acting business in this State prior to the first day of "September, 1886, shall be exempt from the pay- "ment of the fees required under the provisions of "this section. The Secretary of State shall there- "upon issue to such corporation a permit, in such "form as he may prescribe, for the transaction of "the business of such corporation, and upon receipt "of such permit said corporation shall be permitted "and authorized to conduct and carry on its busi- "ness in this State. Nothing in this section shall be "construed to prevent any foreign corporation from "buying, selling and otherwise dealing in notes,

"bonds, mortgages and other securities." (21 G. A., ch. 76, section 1.)

Section 1638 provides:—

"PERMIT. No foreign corporation which has not "in good faith complied with the provisions of this "chapter and taken out a permit shall possess the "right to exercise the power of eminent domain, or "exercise any of the rights and privileges conferred "upon corporations, until it has so complied here- "with and taken out such permit." (Same, section 2.)

Section 1639 provides:—

"PENALTY. Any foreign corporation that shall "carry on its business in violation of the provisions "of this chapter in the State of Iowa, by its officers, "agents or otherwise, without having complied with "this statute and taken out and having a valid per- "mit, shall forfeit and pay to the State, for each and "every day in which such business is transacted and "carried on, the sum of one hundred dollars, to be re- "covered by suit in any court having jurisdiction; "and any agent, officer or employe who shall know- "ingly act or transact such business for such corpora- "tion, when it has no valid permit as provided herein, "shall be guilty of a misdemeanor, and for such "offense shall be fined not to exceed one hundred dol- "lars, or be imprisoned in the county jail not to "exceed thirty days, or by both such fine and impris- "onment, and pay all costs of prosecution. Nothing "contained in this chapter shall relieve any person, "company, corporation, association or partnership "from the performance of any duty or obligation now "enjoined upon or required of it, or from the pay- "ment of any penalty or liability created by the stat- "utes heretofore in force, and all foreign corpora- "tions, and officers and agents thereof, doing business "in this State shall be subject to all the liabilities, re- "strictions and duties that are or may be imposed "upon corporations of like character organized under

"the general laws of this State, and shall have no "other or greater powers." (Same section 4.)

In addition to the general provisions authorizing foreign corporations to do business in the State, there are specific provisions relating to foreign insurance companies, found at sections 1721 to 1725 of the Code of 1897.

Section 1721 provides:—

"FOREIGN COMPANIES—CAPITAL REQUIRED. No "insurance company, association or partnership in- "corporated, associated or organized under or by the "laws of any other State or any foreign government, "for the purposes specified in this chapter, shall di- "rectly or indirectly take risks or transact any busi- "ness of insurance in the State, unless possessed of "two hundred thousand dollars of actual paid up "capital, exclusive of any assets deposited in other "States and Territories for the special benefit or se- "curity of the insured therein; but the provisions of "this section shall not apply to mutual insurance "companies or associations specifically organized for "the purpose of and insuring a single class of prop- "erty only; and companies organized to insure plate "glass exclusively are not required to have a greater "capital than one hundred thousand dollars; but such "companies organized to insure against personal in- "jury, disablement or death resulting from traveling "or general accidents by land or water exclusively, "having an actual paid up capital of one hundred "thousand dollars and one hundred thousand dollars "cash surplus safely invested, exclusive of any assets "deposited in other States and Territories for the "special benefit or security of the insured therein, "shall be deemed to be possessed of two hundred "thousand dollars actual paid up capital within the "meaning of this section."

Section 1724 provides:—

"When any foreign company has fully complied "with the requirements of law, and become entitled

"to do business, the Auditor of State shall issue to "such company a certificate of that fact, which certifi- "cate shall be renewed annually on the first day of "March, if the Auditor is satisfied that the capital, "securities and investments of such company remain "unimpaired, and the company has complied with "the provisions of law applicable thereto."

The bill of complaint in this case specifically charges a full compliance with all provisions of the law by the various complainants in this case; the granting of authority to do business; and the large and valuable interests which each of the complainant companies has acquired and accumulated within the State of Iowa by reason of the permission heretofore granted by the authorities of said State to do business within its limits.

This court has frequently held that corporations of the kind and character of the complainants are persons within the meaning of constitutional provisions, and entitled to the protection of all such provisions the same as natural persons.

In case of Gulf, Colorado & Santa Fé Railway *vs.* Ellis, 165 U. S., 154, this court said:—

"It is well settled that corporations are persons "within the provisions of the Fourteenth Amend- "ment of the Constitution of the United States. (See "cases cited.) The rights and securities guaranteed "to persons by that instrument cannot be disregarded "in respect to these artificial entities called corpora- "tions any more than they can be in respect to the "individuals who are the equitable owners of the "property belonging to such corporations. A State "has no more power to deny to corporations the "equal protection of the law than it has to individual "citizens."

See—

Santa Clara County *vs.* Southern Pacific Ry., 118 U. S., 394;

Pembina Mining Co. *vs.* Pennsylvania, 125 U. S., 181-189;

Missouri Pacific Ry. *vs.* Mackey, 127 U. S., 205;
M. & St. L. Ry. *vs.* Herrick, 127 U. S., 210;
M. & St. L. Ry. *vs.* Beckwith, 129 U. S., 26;
Charlotte Railway *vs.* Gibbes, 142 U. S., 386;
Covington Turnpike Co. *vs.* Sandford, 164 U. S., 578.

Judge McPherson, in determining this question in the Circuit Court, very persuasively set out the reasons why foreign corporations are entitled to protect themselves against unconstitutional acts in the following language, 125 Fed., 124 (Record, page 20):—

"Chapter 4, title 9 of the Iowa Code, which chapter "includes the statutes now under consideration, af- "firmatively makes two among other things appear: "(1) That it is the policy of this State to invite "solvent and reliable foreign insurance companies "to come into this State, particularly for the purpose "of giving the people the benefit of competition, and "partly for the purpose of obtaining revenue for the "State treasury; and both purposes are subserved. "(2) That it is the duty of the State Auditor to li- "cense such companies to do business in the State, if "upon investigation he finds them solvent and finan- "cially worthy. Such being the policy of the State, "and such being the duty of the Auditor, he cannot "deny the foreign companies, of the kind as above "described, from receiving the proper certificate and "from doing an Iowa business. Should he undertake "to keep such a company out, the proper court will "by *mandamus* compel him to grant the authority, "and admit such company. This being so, he can- "not put them out, after they are once lawfully and "rightfully in, excepting by virtue of the power "lodged with him under a valid and constitutional "statute. * * * These companies having the "requisite capital, being solvent, having paid their "taxes and license fees, and having done all the "things required of them by the laws of Iowa and "the exactions of the Auditor, having been invited to

"do business in the State, and being now rightfully "here, they for the time being, and until the policy of "the State is changed, have the rights, neither more "nor less, than the Iowa companies enjoy, and illegal "exactions cannot be made upon them."

The Texas Court of Appeals, in New York Life Insurance Co. *vs.* Smith, 41 S. W., 687, decided this identical question, in sustaining the right of the New York Life Insurance Company to contest the constitutionality of a Texas statute. The court said:—

"Appellant, as a foreign insurance corporation, can "assail the said article as unconstitutional. It is true "that generally the State admits such corporations to "do business within its jurisdiction by comity, and "hence may subscribe such terms as it sees fit upon "which to admit them to transact business within its "jurisdiction, and these matters are solely for the dis-"cretion of the legislature. Appellant, as a foreign "insurance corporation coming into Texas to trans-"act its business, is bound by all the valid laws of "Texas, whatever they may be, so far as the same "are applicable to it; but the article in question is not "one of the prescribed conditions upon which it ob-"tained its right to transact business in this State. "There is no article or provision of our statutes that "we have been able to find that so declares the law. "* * * And the article of our statutes under con-"sideration is applicable alike to both foreign and do-"mestic life insurance companies."

For the purposes of this case it is not necessary for us to say that if foreign corporations are permitted to enter a State upon the express condition that they shall be subject to certain conditions and provisions, or that if domestic corporations are incorporated upon similar express conditions and provisions, they will not thereafter be permitted to challenge the constitutionality of such conditions and provisions imposed upon them in connection with the grant of the right to do business or to exist.

The intimation, however, in Fidelity Mutual Life Association *vs.* Mettler, 185 U. S., 326, that the payment of an attorney's fee in case of litigation of a life insurance policy "amounted to one of the conditions on which life "and health insurance companies were permitted to do "business in Texas," originated in the consideration of a statute which imposed the duty thus to pay as such condition. There is nothing in the Iowa law which made the provisions we are considering a condition of corporate entrance or existence.

We will endeavor to show (1) that no such provision as the one of which we complain is imposed upon foreign corporations as a condition of their right to do business in Iowa; and (2) that no such provision is imposed upon domestic corporations as a condition of their incorporation.

Foreign corporations are permitted to enter the State of Iowa and domestic corporations are incorporated in that State under general provisions containing no such condition.

The appellants were permitted to enter, and did enter, the State of Iowa before the Act of 1896 or 1897 became a law. Of course, a very large number of domestic corporations were incorporated before that date.

The provisions we are criticizing were enacted as part of a general law applicable to all corporations, no matter when they entered the State, and to all corporations, no matter when they were incorporated.

If they are unconstitutional as to the corporations which existed before the passage of the Act, even though otherwise constitutional as to the latter, they must fail altogether because of the failure of a law meant to be general in an essential point.

An examination of the law, however, puts beyond question our assertion that it is not imposed as a condition of foreign corporation entry or of domestic corporation existence.

The sole question is whether the provision was constitutional as part of a general enactment applicable alike to all corporation?

As we have said, the provisions of the law in controversy are not conditions upon which foreign insurance companies are permitted to do business in Iowa. No such conclusion can be drawn either from the terms or from the character of the Act.

The Act in question, as now found in the Revised Code of Iowa, includes sections 1754 to 1757, which are part of chapter IV. of title 9, and contains laws applicable to all insurance other than life.

The said sections are in the words following:—

"SEC. 1754.—COMBINATIONS. It shall be unlawful "for two or more fire insurance companies doing "business in this State, or for the officers, agents or "employees of such companies, to make or enter into "any combination or agreement relating to the rates "to be charged for insurance, the amount of commis- "sions to be allowed agents for procuring the same, "or the manner of transacting the fire insurance busi- "ness within this State; and any such company, offi- "cer, agent or employee violating this provision shall "be guilty of a misdemeanor, and on conviction "thereof shall pay a penalty of not less than one hun- "dred dollars nor more than five hundred dollars for "each offense, to be recovered in the name of the "State for the use of the permanent school fund." (26 G. A., ch. xxii., section 1.)

SEC. 1755.—REVOCATION OF AUTHORITY. The "Auditor of State is authorized to summon before "him, for examination under oath, any officer, agent "or employee of any such company suspected of vio- "lating any of the provisions of the preceding section, "and, on complaint to him in writing by two or more "residents of this State charging such company under "oath upon their knowledge or belief with violating "the provisions of the preceding section, he shall "summon any officer, agent or employee of said com- "pany before him for examination under oath; if "upon such examination, and that of any other wit- "ness produced and examined, he shall determine "that such company is guilty of a violation of any "of the provisions of the preceding section, or if any

"such officer, agent or employee after being duly sum-
"moned shall fail to appear or submit to examina-
"tion, the Auditor shall forthwith issue an order re-
"voking the authority of such company to transact
"business within this State, and it shall not there-
"after be permitted to do the business of fire insur-
"ance in this State at any time within one year there-
"from." (Same, section 2.)

"SEC. 1756.—APPEAL. Either party may appeal
"from the decision of the Auditor, made pursuant to
"the preceding section, to the district court of the
"county where the same was made, within twenty
"days from the time of the rendition of such decision,
"by serving a written notice of such appeal on the
"Auditor, and filing with the clerk of said court a
"good and sufficient bond for the payment of all costs
"on the appeal in case the decision shall be affirmed.
"On such appeal said court shall try the case *de novo*,
"as equitable causes are tried, and on such evidence
"as either party may produce, and may reverse, mod-
"ify or affirm the decision of the Auditor." (Same,
section 3.)

"SEC. 1757.—EVIDENCE. The statements and dec-
"larations made or testimony given by any officer,
"agent or employee in the investigation before the
"Auditor, or upon the hearing and trial before the
"district court, as provided in the two preceding sec-
"tions, shall not be used against the person making
"the same in any criminal prosecution against him."
(Same, section 4.)

These statutes were originally enacted as chapter XXII. of the 26th G. A., approved March 6th, 1896, long after complainants, and each of them, had been admitted to do business in the State of Iowa. Sections 1721 and 1724 of the same Code, which provide the terms under which foreign insurance companies can do business in Iowa, are continuations of the general expression of the law of Iowa as to foreign insurance companies as far back, at least, as section 1144 of the Code of 1873, and there is no language in the provisions providing for the terms

under which foreign insurance companies shall do business that would justify the conclusion that they were permitted to do business in Iowa upon their compliance with the provisions of all laws in force at the time that they were admitted into the State, or such as might be enacted after their admission. If this were true, the right accorded to all foreign corporations to contest the constitutionality of laws would be entirely nullified.

This court, in unmistakable terms, has said that the granting of a license by the authorities of a State to a foreign corporation to do business within its jurisdiction must not be considered as a waiver on the part of the insurance company, or as an acquiescence, on its part, that it will be bound by all laws, whether the same are or are not constitutional.

In Insurance Co. *vs.* Morse, 20 Wall., 451, this court held that a statute imposing an obligation upon insurance companies to refrain from removing actions to the Federal court was not a provision that bound the insurance companies, and that foreign insurance companies had the right to contest the constitutionality of such a statute after they had accepted the privilege of doing business in the State.

In the more recent case of Cargill Co. *vs.* Minnesota, 180 U. S., 468, where the right to carry on the business of storage and shipment of grain by foreign companies licensed by the State was in issue, in determining the right of a Wisconsin corporation to contest the constitutionality of the law, after such corporation had been licensed by the State, this court said:—

> "The defendant, however, insists that some of the "provisions of the statute are in violation of the Con-"stitution of the United States, and if it obtained the "required license, it would be held to have accepted "all of its provisions, and (in the same words of the "statute) 'thereby to have agreed to comply with the "'same.' Section 1. The answer to this suggestion is "that the acceptance of a license, in whatever form, "will not impose upon the licensee an obligation to re-

"spect or to comply with any provisions of the "statute or with any regulations prescribed by the "State Railroad and Warehouse Commission that "are repugnant to the Constitution of the United "States. A license will give the defendant full au- "thority to carry on its business in accordance with "the valid laws of the State and the valid rules and "regulations prescribed by the Commission. If the "Commission refused to grant a license, or if it "sought to revoke one granted, because the appli- "cant in the one case, or the licensee in the other, "refused to comply with statutory provisions or "with rules or regulations inconsistent with the Con- "stitution of the United States, the rights of the ap- "plicant or the licensee could be protected and en- "forced by appropriate judicial proceedings."

In the dissenting opinion of Justices Harlan and Brown, in Fidelity Life Association *vs.* Mettler, 185 U. S., 332, in commenting upon the effect of the State issuing license to a foreign corporation to do business, it was said:—

"It is one thing for a State to forbid a particular "foreign corporation or a particular class of for- "eign corporations from doing business at all "within its limits. It is quite another thing for "a State to admit or license foreign corporations to "do business within its limits and then subject them to "some statutory provision that is repugnant to the "Constitution of the United States. If a corporation, "doing business in Texas under its license or with "its consent, insists that a particular statute or regu- "lation is in violation of the Constitution of the "United States, and cannot therefore be enforced "against it, the State need only reply—such seems "to be the logical result of the present decision— "that the statute or regulation is a condition of the "right of the corporation to do business in the State, "and, whether constitutional or not, must be re- "spected by the corporation. Corporations created "by the several States are necessary to the conduct "of the business of the country; and it is a startling "proposition that a State may permit a corporation

"to do business within its limits, and by that act ac-
"quire the right to subject the corporation to regu-
"lations that may be inconsistent with the supreme
"law of the land."

The very clear import of the law under consideration will not justify a construction that its observance is a condition of the right on the part of foreign fire insurance companies to do business in Iowa. It is placed in a chapter applying to all insurance companies other than life. By its terms it applies only to fire insurance companies. The law admitting foreign companies is a general law, applicable to all insurance companies other than life, and there is no language and no expression in the Act from which it can fairly be claimed that, when a foreign fire insurance company complies therewith, it was meant that all laws, of every kind, theretofore and thereafter enacted, must be obeyed as a condition of doing business in Iowa.

In Norton *vs.* Shelby County, 118 U. S., 442, this court said:—

"An unconstitutional act is not a law; it confers
"no right; it imposes no duty; it affords no protec-
"tion; it creates no office; it is, in legal contempla-
"tion, as inoperative as though it had never been
"passed."

In Cooley's Constitutional Limitations (Fifth Edition), 224, it is said:—

"When a statute is adjudged to be unconstitu-
"tional, it is as if it had never been. Rights cannot
"be built up under it; contracts which depend upon
"it for their consideration are void; it constitutes a
"protection to no one who has acted under it, and
"no one can be punished for having refused obedience
"to it before the decision was made."

In Insurance Co. *vs.* Morse, 77 U. S., 445, this court held that an agreement of an insurance company, on condition of which it entered a State, derived no support from an unconstitutional statute and was void as it would have been had no such statute been passed.

In Barron *vs.* Burnside, 121 U. S., 186, this court, speaking through Mr. Justice Blatchford, said:—

> "In both of the cases referred to, the foreign corporation had made the agreement not to remove into the Federal court suits to be brought against it in the State court. In the present case no such agreement has been made, but the locomotive engineer was arrested for acting as such in the employment of the corporation, because it has refused to stipulate that it will not remove into the Federal court suits brought against it in the State court, as a condition of obtaining a permit, and consequently has not obtained such permit. Its right, equally with any individual citizen, to remove into the Federal court, under the laws of the United States, such suits as are mentioned in the third section of the Iowa statute, is too firmly established by the decisions of this court to be questioned at this day; and the State of Iowa might as well pass a statute to deprive an individual citizen of another State of his right to remove such suits. As the Iowa statute made the right to permit dependent upon the surrender by the foreign corporation of a privilege secured to it by the Constitution and the laws of the United States, the statute requiring the permit must be held to be void."

III. SECTIONS 1754-1757 OF THE CODE OF IOWA ARE IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

(A.) *IN LIMITING THE PROVISIONS OF THESE SECTIONS TO FIRE INSURANCE COMPANIES THERE IS AN ARBITRARY AND UNJUSTIFIABLE CLASSIFICATION. THE PROVISIONS OF THE STATUTE BEING IN GENERAL TERMS ARE APPLICABLE NOT ONLY TO ALL KINDS OF INSURANCE, BUT TO ALL KINDS AND BRANCHES OF COMMERCE AND TRADE.*

The sections of the Iowa Code referred to were originally enacted as chapter XXII. of the laws of the 26th

G. A., approved April 3d, 1896, the Act being entitled "An Act to prevent combinations between "fire insur- "ance companies and providing penalties therefor." The first section of the Act makes a misdemeanor, punishable by a pecuniary fine—

> "Any combination or agreement * * * by or "between two or more fire or other insurance com- "panies insuring property against casualties from the "elements, transacting business within this State, or "between the officers, agents, or employes of any "such companies, *relating to the rates to be charged for "insurance, the amount of commissions to be allowed "agents for procuring insurance, or the manner of trans- "acting the business of fire insurance within this State.*"

Section 2 provides for an unusual remedy, by granting the State Auditor, *on his own motion*, or on complaint made by two or more residents of the State, authority to summon any officer or employee of any fire insurance company to appear before him for examination, on his own motion when *suspected* of violating the provisions of the Act, or, on complaint, when charged with violation, and further provides for the issuance by him of an order suspending any company found guilty from doing business for one year.

Section 3 of the Act provides for an appeal to the district court, and section 4 provides that any evidence given before the Auditor shall not be used against any person giving same in any criminal prosecution.

At the time of the passage of this special Act there was in force in the State of Iowa a general statute prohibiting any corporation, partnership, association or individual from "creating, entering into or becoming a member of "a party to any pool, trust, agreement, contract, combina- "tion, confederation or understanding with any other cor- "poration, partnership, association or individual to regu- "late or fix the price of any article of merchandise or "commodity, or to fix or limit the amount or quantity of "any article, commodity or merchandise to be manufac-

"tured, mined, produced or sold in this State." See section 5060, Code of 1897.

Section 5062 provides that a violation of such section shall be punished, in the event of a corporation, by a fine of not less than one per cent. of its capital or amount invested nor more than twenty per cent. of same, or, in the case of an individual, by a fine of not less than five hundred nor more than five thousand dollars.

These provisions were originally enacted as chapter XXVIII. of the laws of the 23d G. A., passed May 6th, 1890.

A similar law to the one above referred to was construed by the Supreme Court of Iowa in case of Beechley *vs.* Mulville, 102 Iowa, 602, wherein it was held that insurance was a commodity, and the general statute applied to combinations in the matter of fire insurance, so that at the time of the passage of the law under consideration there was a general statute prohibiting combinations as to rates of fire insurance companies which applied equally to all kinds of business and all articles of merchandise or commodities to be manufactured, mined, produced, or sold in Iowa. The special character of this legislation and its arbitrary classification as to fire insurance companies is emphasized by this condition.

The specific and controlling objection to this law, so far as classification is concerned, is that it lays down general rules as to (1) combination as to rates, (2) commission to be allowed agents, and (3) method of doing business in the matter of fire insurance companies, which will apply with equal force to all kinds and classes of business; but these general rules, applicable to all classes of business, and especially applicable to all kinds of insurance, fire, life, accident, tornado, &c., by the terms of the law are limited to fire insurance only.

The fact that the subject is dealt with in a general law, applicable to all corporations, demonstrates that it is not one which, as between the different kinds of insurance companies, is properly the subject of classification.

In other words, the law does not create provisions pe-

culiarly applicable to fire insurance, nor does it make rules that apply with peculiar force to fire insurance by reason of any peculiar characteristics of that business as distinguished from any of the other many kinds of insurance or business, and these general rules could be, as they have been, applied with equal force to the conduct of any other business institution carried on by corporations, and especially to all other kinds of insurance contracts.

For instance, the Kansas anti-trust law, as set out *In re* Pinkney, 27 Pac., 179, includes by a specific enumeration insurance and interest charged for the use of money in the general terms of a law applicable to all classes of articles entering into trade or commerce, and all kinds of insurance and interest charges.

As to combination as to rates, any reason which can be urged against combinations as to rates in fire insurance can be urged with equal or greater force as to prices of an innumerable number of other rates and articles of general commerce. The selection of fire insurance as the only subject of these general rules and restrictions seems arbitrary and capricious in the extreme. The penalties for violations of this statute are unusual and unnecessary restrictions upon a private and lawful occupation, and would seem to be in clear violation of many of the general rules which have been adopted by this court.

In Bell's Gap Railroad *vs.* Pennsylvania, 134 U. S., 232, at page 237, this court said:—

> "Clear and hostile discriminations against particu-
> "lar persons and classes, especially such as are of an
> "unusual character, unknown to the practice of our
> "governments, might be obnoxious to the constitu-
> "tional prohibition."

In Magoun *vs.* Illinois Trust & Savings Bank, 170 U. S., 293, in quoting from Kentucky Railroad Tax Cases, 115 U. S., 321-337, it was said that the rule of the Fourteenth Amendment of the Constitution—

> "Only requires the same means and methods to
> "be applied impartially to all the constituents of a

"class so that the law shall operate equally and uni-
"formly upon all persons in similar circumstances."

In the matter of classification, the courts have uniformly declined to permit legislatures to make arbitrary, unreasonable and unjustifiable classification, and to limit the application of general rules to a particular business or a particular interest which the legislature may desire to control, when such general rules are equally applicable and can apply with equal force to a large number of other interests or classes.

We believe the legislation in question falls clearly within the rules which have been laid down and in a number of instances enforced by this court.

Some general rules which have the approval of many of the highest courts are announced by Mr. Cooley in his work on Constitutional Limitations, page 484, 5th ed.:—

"Every one has a right to demand that he be
"governed by general rules, and a special staute
"which, without his consent, singles his case out as
"one to be regulated by a different law from that
"which is applied in all similar cases, would not be
"legitimate legislation, but would be such an arbi-
"trary mandate as is not within the province of free
"governments. Those who make the laws 'are to
" 'govern by promulgated, established laws, not to
" 'be varied in particular cases, but to have one
" 'rule for rich and poor, for the favorite at court
" 'and the countryman at plow.' This is a maxim
"in constitutional law, and by it we may test the au-
"thority and binding force of legislative enactment."

And at page 486, 5th ed., of the same work it is said:—

"The doubt might also arise whether a regulation
"made for any one class of citizens, entirely arbitrary
"in its character, and restricting the rights, privileges,
"or legal capacities in a manner before unknown to
"the law, could be sustained, notwithstanding its
"generality. Distinctions in these respects must rest
"upon some reason upon which they can be de-

"fended—like the want of capacity in infants and in-
"sane persons; and if the legislature should under-
"take to provide that persons following some speci-
"fied lawful trade or employment should not have
"capacity to make contracts or to receive convey-
"ances, or to build such houses as others were al-
"lowed to erect, or in any other way to make such use
"of their property as was permissible to others, it
"can scarcely be doubted that the Act would trans-
"cend the due bounds of legislative power, even
"though no express constitutional provision could
"be pointed out with which it would come in con-
"flict. To forbid to an individual or a class the right
"to the acquisition or enjoyment of property in such
"a manner as should be permitted to the community
"at large would be to deprive them of *liberty* in par-
"ticulars of primary importance to their 'pursuit of
" 'happiness;' and those who should claim a right to
"do so ought to be able to show a specific authority
"therefor, instead of calling upon others to show how
"and where the authority is negatived."

In the case of Gulf, Colorado & Santa Fé Railway *vs.* Ellis, 165 U. S., 150, where a statute of the State of Texas provided, when claims for ~~cattle killed by~~ against railroads did not exceed the sum of fifty dollars, that, in addition to the amount of damages, an attorney's fee of ten dollars could be recovered, this court, after reviewing a large number of authorities, held the Texas statute unconstitutional. In the course of the opinion the court, at page 157, said:—

"But before a distinction can be made between
"debtors, and one be punished for a failure to pay his
"debts, while another is permitted to become in like
"manner delinquent without any punishment, there
"must be some difference in the obligation to pay,
"some reason why the duty of payment is more im-
"perative in the one instance than in the other.
"* * * But the penalty is not imposed upon all
"business corporations, all chartered for the pur-
"pose of private gain. The banking corporations,
"the manufacturing corporations and others like

"them, are exempt. Further, the penalty is im-
"posed not upon all corporations charged with the
"*quasi* public duty of transportation, but only upon
"those charged with a particular form of that duty.
"So the classification is not based on any idea of
"special privileges by way of incorporation, nor of
"special privileges given thereby for purposes of
"private gain, nor even of such privileges granted
"for the discharge of one general class of public
"duties."

Again, at page 159, the court said:—

"Indeed, the statute arbitrarily singles out one
"class of debtors and punishes it for a failure to
"perform certain duties—duties which are equally
"obligatory upon all debtors; a punishment not
"visited by reason of the failure to comply with any
"proper police regulations, or for the protection of
"the laboring classes or to prevent litigation about
"trifling matters, or in consequence of any special
"corporate privileges bestowed by the State. Unless
"the legislature may arbitrarily select one corpora-
"tion or one class of corporations, one individual
"or one class of individuals, and visit a penalty upon
"them which is not imposed upon others guilty of
"like delinquency this statute cannot be sustained."

Again, at page 161, it is said:—

"A law which would require all farmers who raise
"cotton to pay such a fee in cases where cotton was
"the subject-matter of litigation and the owners of
"this staple were parties to the suit would be so dis-
"criminating in its nature as to appear manifestly
"unconstitutional; and one which should confine the
"tax alone to physicians or merchants or ministers
"of the Gospel would be glaring in its obnoxious re-
"pugnancy to those cardinal principles of free gov-
"ernment which are found incorporated, perhaps, in
"the bill of rights of every State Constitution of the
"various Commonwealths of the American Govern-
"ment."

And finally, at page 165, the court said:—

> "It is apparent that the mere fact of classification "is not sufficient to relieve a statute from the reach "of the equality clause of the Fourteenth Amend- "ment and that in all cases it must appear not only "that a classification has been made, but also that it "is one based upon some reasonable ground—some "difference which bears a just and proper relation to "the attempted classification—and is not a mere "arbitrary selection."

We believe it impossible to distinguish in principle the rules and reasoning which control this court in the Ellis case and the propositions which are presented in the case at bar. The rule as to combination of rates applies with equal force to all business interests generally, especially to all other kinds of insurance, and how a selection of fire insurance can be made, to which shall be applied these general rules, without such selection being unfair and arbitrary, we are unable to determine.

The Texas Court of Appeals, in case of New York Life Insurance Co. *vs.* Smith, 41 S. W., 685, in following the Ellis case, held a statute of the State of Texas, which provided in all cases where recovery was had for loss as against life or health insurance companies, that there should be added to the amount of the loss twelve per cent. damages. The Texas court, in holding this statute in violation of the Federal Constitution, said:—

> "It will be readily seen that life and health insur- "ance companies are alone selected, of all other cor- "porations doing business in Texas, who may be sued "in our courts for the recovery of a death claim, who "may be made to pay twelve per cent. penalty upon "the claim, and a reasonable attorney's fee for the "collection of such claim. There are no other "debtors known to our law who are treated so "harshly by our lawmaking power. Fire and marine "insurance companies, banks, and all other corpora- "tions are exempt from such burdens. The classifica-

"tion of life and health insurance companies by the "legislature, upon which to visit the penalty provided "by article 3071, was certainly not based upon any "idea of special privileges granted to them, for it is "not made a condition by any article of our statutes "upon which foreign or domestic insurance com- "panies can do business in Texas that they should "pay such penalties as are prescribed in this article "for failing to pay their debts at maturity, and the "classification of life and death insurance com- "panies cannot be sustained upon the basis of the "business in which they are engaged. The business "in which life insurance companies are engaged is "not of a dangerous nature, requiring the exercise "by the legislature of its police powers. The statute "under consideration in this case does not proceed "upon the theory that such insurance companies owe "any duty to the public in regard to the payment of "their debts, more than other debtors owe to the pub- "lic. The object of this article is to compel such in- "surance companies to pay their debts for a death "claim within the time provided by the policy."

In Cotting *vs.* Kansas City Stock Yards Co., 183 U. S., 112, a Kansas statute which, among other things, discriminated in charges allowed by stock yards in favor of those yards doing an average daily business of one hundred head of cattle, three hundred head of hogs and three hundred head of sheep, as against stock yards doing a smaller business, was held unconstitutional. In the course of the opinion this court said:—

"There can be no pretence that a stock yard which "receives ninety-nine head of cattle per day a year "is not doing precisely the same business as one re- "ceiving one hundred and one head of cattle per day "each year. It is the same business in all its essen- "tial elements, and the only difference is that one "does more business than the other. But the receipt "of an extra two head of cattle per day does not "change the character of the business. If once the "door is opened to the affirmance of the proposi-

"tion that a State may regulate one who does much "business, while not regulating another who does "the same but less business, then all significance in "the guarantee of the equal protection of the laws is "lost, and the door is opened to that inequality of leg- "islation which Mr. Justice Catron referred to in the "quotation above made. This statute is not simply "legislation which in its direct results affects different "individuals or corporations differently, nor with "those in which a classification is based upon inher- "ent differences in the character of the business, but "is a positive and direct discrimination between per- "sons engaged in the same class of business and based "simply upon the quantity of business which each "may do. If such legislation does not deny the "equal protection of the laws, we are unable to per- "ceive what legislation would."

The quotation from Mr. Justice Catron in case of Vanzant *vs.* Waddel, 2 Yerger, 260-270, above referred to, is as follows:—

"Every partial or private law, which directly pro- "poses to destroy or affect individual rights, or does "the same thing by affording remedies leading to "similar consequences, is unconstitutional and void. "Were this otherwise, odious individuals and corpo- "rate bodies would be governed by one rule, and the "mass of the community, who made the law, by "another."

How applicable are these quotations to the Iowa statute! There is no inherent difference in rates for fire insurance and rates for life, accident and tornado insurance. If it so be that the business of fire insurance has for some reason become odious in Iowa, this law permits the corporate bodies engaged in this business to be governed by one rule, and the mass of the community by another.

In case of Connolly *vs.* Union Sewer Pipe Co., 184 U. S., 540-563, this court held the anti-trust law of Illi-

nois, which prohibited combinations in all ordinary business transactions except "agricultural products or live "stock while in the hands of the producer or raiser," unconstitutional. The Illinois law was held unconstitutional because it exempted one class from the general rule. The law under discussion is subject to the same criticism, because it confines the effect of a general rule to one particular class. In the Connolly case the court said:—

> "But different considerations control when the "State, by legislation, seeks to regulate the enjoy- "ment of rights and the pursuit of callings connected "with domestic trade. In prescribing regulations "for the conduct of trade, it cannot divide those en- "gaged in trade into classes and make criminals of "one class if they do certain forbidden things, while "allowing another and favored class engaged in the "same domestic trade to do the same things with im- "punity. It is one thing to exert the power of taxa- "tion so as to meet the expenses of government, and "at the same time, indirectly, to build up or protect "particular interests or industries. It is quite a dif- "ferent thing for the State, under its general police "power, to enter the domain of trade or commerce, "and discriminate against some by declaring that "particular classes within its jurisdiction shall be "exempt from the operation of a general statute "making it criminal to do certain things connected "with domestic trade or commerce. Such a statute "is not a legitimate exertion of the power of classifi- "cation, rests upon no reasonable basis, is purely arbi- "trary, and plainly denies the equal protection in the "laws to those against whom it discriminates."

At page 564, in considering the particular provisions of the Illinois law, the court said:—

> "Two or more engaged in selling dry goods, or "groceries, or meats, or fuel, or clothing, or medi- "cines, are, under the statute, criminals, and subject "to a fine, if they combine their capital, skill or acts "for the purpose of establishing, controlling, increas-

"ing or reducing prices, or of preventng free and un-
"restrained competition amongst themselves or
"others in the sale of their goods or merchandise;
"but their neighbors, who happen to be agricultur-
"ists and live stock raisers, may make combinations
"of that character in reference to their grain or live
"stock without incurring the prescribed penalty.
"Under what rule of permissible classification can
"such legislation be sustained as consistent with the
"equal protection of the laws?"

So, in the case at bar, all companies in Iowa selling life insurance may employ experts who shall classify risks, determine, as the result of experience and mutual comparison of business, just and reasonable rates to be charged for their contracts of indemnity, and agree as to what such charges shall be. The same reasons why this privilege should be extended to fire insurance companies exist. There can be no distinction as to the applicability of the general rule of the statute to these two classes of insurance, yet the fire insurance interests are prohibited, arbitrarily and without any just ground for distinction, from enjoying privileges which are extended to companies interested in life insurance.

In State *vs.* Loomis, 115 Mo., 307-314, 21 L. R. A., 789, where, by a statute of the State of Missouri, persons engaged in mining or manufacturing were prohibited from paying laborers in any other commodity or thing than lawful money of the United States, the Missouri court, in holding this law unconstitutional, because of its arbitrary classification, said:—

"But classification for legislative purposes must
"have some reasonable basis upon which to stand. It
"must be evident that differences which would serve
"for a classification for some purposes furnish no rea-
"son whatever for a classification for legislative pur-
"poses. The differences which will support class leg-
"islation must be such as in the nature of things fur-
"nish a reasonable basis for separate laws and regu-
"lations. Thus the legislature may fix the age at

"which persons shall be deemed competent to con-
"tract for themselves, but no one will claim that com-
"petency to contract can be made to depend upon
"stature or color of the hair. Such a classification
"for a purpose would be arbitrary and a piece of
"legislative despotism, and therefore not the law of
"the land."

Again the court said (page 315):—

"There can be no doubt but the legislature may
"regulate the business of mining and manufacturing
"so as to secure the health and safety of the em-
"ployes, but that is not the scope of the two sec-
"tions of the statute now in question. They single
"out those persons who are engaged in carrying on
"the pursuits of mining and manufacturing, and say
"to such persons, 'You cannot contract for labor pay-
" 'able alone in goods, wares, and merchandise.' The
"farmer, the merchant, the builder, and the numer-
"ous contractors employing thousands of men
"may make such contracts, but you cannot. They
"say to the mining and manufacturing employees,
"though of full age and competent to contract, still
"you shall not have the power to sell your labor for
"meat and clothing alone as others may."

This quotation emphasizes the argument in this case. If the regulation as to fire insurance was as to some matter peculiar and inherent to the business of fire insurance, there might be some excuse and some plausible reason why the law should be sustained, but the rule of the statute is general, and has no relation whatever to any inherent or peculiar characteristics of fire insurance.

In Eden *vs.* People, 161 Ill., 296, 43 N. E., 1108, where a statute of the State of Illinois, prohibiting barbers from plying their trade on Sunday, was held void, the court, at the conclusion of the opinion, said:—

"If the public welfare of the State demand that all
"business and all labor of every description except
"work of necessity and charity should cease on Sun-

"day, the first day of the week, and that day shall be "kept as a day of rest, the legislature has the power to "enact a law requiring all persons to refrain from "their ordinary callings on that day; and in order that "Sunday may be kept as a day of rest then all will be "placed on a perfect equality, and no one can com- "plain of an unjust discrimination. But when the "legislature undertakes to single out one class of "labor, harmless in itself, and condemn that, and that "alone, it transcends its legitimate powers and its "action cannot be sustained."

In Johnson *vs.* Railway Co., 45 N. W., 157, in construing an Act making railroad companies liable for negligence of co-employees while engaged in the operation of the road, the Minnesota court said:—

"Neither would it relieve the Act from the imputa- "tion of class legislation that it applies alike to all "railroads. It has been sometimes loosely stated that "special legislation is not class, 'if all persons brought " 'under its influence are treated alike under the " 'same conditions.' But this is only half the truth. "Not only must it treat alike, under the same condi- "tions, all who are brought 'within its influence,' but "in its classification it must bring within its influence "all who are under the same conditions."

In State of Iowa *vs.* Garbroski, 111 Iowa, 498, where a law requiring peddlers to take out license excepted from its provisions those who had served in the Union army or navy during the Civil War, the court, in holding the statute void, said:—

"All the authorities agree that the distinction in "dividing may not be arbitrary, and must be based "on differences which are apparent and reasonable."

And, in quoting from the case of Nichols *vs.* Walter, 37 Minn., 264, 33 N. W., 800, the court further said:—

"The true, practical limitation of the legislative "power to classify is that the classification shall be

"upon some apparent natural reason—some reason "suggested by necessity; by such a difference in the "situation, and circumstances of the subjects placed "in different classes as suggests the necessity or pro- "priety of different legislation with respect to them."

And again, at page 499, in quoting from the case of Sutton *vs.* State, 96 Tenn., 696, it was said:—

"Legislation, to be constitutional and valid, 'must " 'possess each of two indispensable qualities: *First*, " 'it must be so formed as to extend to and embrace " 'equally all persons who are or may be in the like " 'situation or circumstances; and, *secondly*, the classi- " 'fication must be natural and reasonable, and not " 'arbitrary or capricious.' "

In San Antonio Railway *vs.* Wilson, 19 S. W., 912, where a Texas statute, providing that, if railroad companies failed to pay claims for wages within fifteen days, there could be recovered a penalty of twenty per cent. of the amount due, was held void, the court said:—

"The doctrine is often stated that a statute is gen- "eral and uniform in its operation, and not subject "to the objection of being 'class legislation,' when it "affects equally all who are brought within the rela- "tions and circumstances provided for, though it may "not operate on every citizen. * * * But it by no "means follows that the legislature has the right to "impose any burden by simply placing it on all the "individuals of a certain class. It must rest upon "some reason upon which it could be defended."

Again, at page 913, it was said:—

"We think that an exception that undertakes to "single out a single class, and attach a penalty to a "failure to pay one class of their creditors, is not "failure to pay one class of their creditors, is not 'the " 'law of the land,' and cannot be sustained. * * * "The proposition here is to single out railway com-

"panies, and attach a penalty of twenty per cent. for "failure to pay servants' wages. It is impossible to "regard the excess beyond the amount of the debt "other than a penalty. It is not resting on contract, "but is a penalty or fine for punishment. It does not "apply to telegraph, telephone, or express companies, "warehouses, elevators, mills, street railways, gas and "electric companies, or hotels, nor to any of the "various enterprises of public necessity, interest, and "convenience to which it might properly be applied."

In Wilder *vs.* Chicago Railway, 70 Mich., 382, 38 N. W., 289, in holding a statute of the State of Michigan, authorizing the recovery of twenty-five dollars attorney's fees in claims against railroads on account of stock killed, void, the court said:—

"Here the legislature has granted special advan- "tages to one class, at the expense and to the detri- "ment of another, and has undertaken to make the "courts themselves the active agents in this injustice, "and to force them to impose penalties in the dis- "guise of costs upon railroad companies for simply "exercising, in certain cases, the common right of "every person to make a defense in the courts when "suits are brought against them."

In the recent case of Street *vs.* Varney Electrical Supply Co., decided April 1st, 1903, 160 Ind., 338, 61 L. R. A., 154-161, a statute of Indiana, requiring a minimum payment of not less than twenty cents an hour for unskilled labor employed upon any public work of State, counties, cities or towns, whether employed by the municipality direct or by a contractor, and further providing for a reasonable attorney's fee in case of suit brought, was held unconstitutional, the court saying:—

"Lastly, we think the statute obnoxious to the ob- "jection of class legislation. In fixing the minimum "rate of wages to be paid for unskilled labor to be "employed by counties, cities, and towns on public

"improvements, a classification is made which is un-
"natural and unconstitutional. The laboring men of
"the State may, for some purposes, constitute a class
"concerning which particular legislation may be
"proper. This classification has been recognized and
"sustained in statutes requiring the payment of
"wages in lawful money of the United States, forbid-
"ding the assignment of future and unearned wages,
"and in similar acts. But no legal and sufficient
"reason can be assigned for placing unskilled labor
"in a class by itself for the purpose of fixing by law
"the minimum rate of wages at which it shall be em-
"ployed by counties, cities, and towns on their public
"works. Why exclude the skilled mechanic from the
"benefit of the Act? Why compel the payment of a
"higher rate of wages to the unskilled laborer than
"may be demanded by the skilled mechanic for more
"difficult and important work, requiring special train-
"ing, experience, and a higher degree of intelligence?
"Unless the legislature has the power to fix the mini-
"mum rate of wages to be paid by counties, cities,
"and towns to carpenters, stone masons, bricklayers,
"plumbers, and painters employed on local improve-
"ments, treating each trade as a separate class, it has
"not the power to enact laws fixing the compensa-
"tion of unskilled laborers employed on similar
"works."

Cases of the foregoing character might be multiplied, but these are sufficient to illustrate the proposition for which we are contending, viz., that this law does not rest on any inherent difference between combinations as to rates of fire insurance and combinations as to prices of other kinds of insurance or other products manufactured, bought and sold.

The case at bar is easily distinguishable from those cases in which classification has been sustained. In each of the cases in which a classification has been sustained it was because the law applied some special rule because of some inherent difference in the class legislated about, from other like and similar classes. As an instance, we take

the valued policy law of Missouri, sustained in Orient Insurance Co. *vs.* Daggs, 172 U. S., 557; but fire insurance is the only class of insurance to which a valued policy law could properly be applied.

In Magoun *vs.* Illinois Trust & Savings Bank, 170 U. S., 299, a collateral inheritance statute of the State of Illinois was sustained because of peculiarities attaching to that special kind of a tax.

In Missouri Railway *vs.* Mackey, 127 U. S., 205, the Kansas fellow-servant law, as applied to those operating railroads, was sustained because the operation of a railroad was a dangerous employment, justifying a proper classification.

M. & St. L. Ry. *vs.* Beckwith, 129 U. S., 26; Missouri Pacific Railway *vs.* Humes, 115 U. S., 512; Electric Co. *vs.* Dow, 166 U. S., 489; A., T. & S. F. Railway *vs.* Matthews, 174 U. S., 97, and St. Louis Railway *vs.* Paul, 173 U. S., 404, are all cases which, upon examination, can be readily distinguished from the case at bar.

We, therefore, submit that the selection of fire insurance companies, to which alone are applied the rules defined in this statute, though such rules are equally applicable to other innumerable classes, is an arbitrary and capricious selection by the legislature, and an attempt upon its part to lay burdens and restrictions upon the conduct of this class of business without any apparent reason why the same burdens should not be laid upon other branches of trade, commerce, banks, other insurance companies, loan and building associations, and other kindred kinds of business.

In 1862, the legislature of Iowa passed an Act providing that "every railroad company shall be liable for all "damages sustained by any person, including employees "of the company, in consequence of any neglect of its "agents, or by any mismanagement of its engineer or "other employees of the company."

In Deppe *vs.* C., R. I. & P. Ry. Co., 36 Iowa, 52, the constitutionality of this Act was challenged on the ground that it was class legislation, and hence violative of the

provisions of the State Constitution, providing that all laws of a general nature shall have uniform operation, and that all laws shall be general and of uniform operation throughout the State. The law was upheld on the ground that it had reference solely to employees engaged in the hazardous business of operating a railroad, and that as so construed and applied it was not class legislation. The following quotation from the opinion which is by Cole, J., contains an apt illustration of what is and what is not class legislation:—

> "But if the statute should be so construed as to "apply to all persons in the employ of railroad "corporations without regard to the business they "were employed in, then it would be a clear case of "*class legislation*, and would not apply upon the same "terms to all in the same situation, and hence would "be unconstitutional, and manifestly so. To illus- "trate, suppose a railroad company employ several "persons to cut the timber on its right of way where "it is about to extend its road, and the landowner "employs a like number of persons to cut the timber "on a strip of equal length alongside such right of "way. If one of each set of employees shall be in- "jured by the negligence of a co-employee, and the "employee of the railroad company can, under the "statute, maintain an action against his employer "and the other cannot, then it is clear that the law "does not apply upon the same terms to all in the "same situation. The law, then, would not have "uniform operation, but would be violative of the "Constitution just as much as a law that should pre- "scribe under the same circumstances different lia- "bilities for merchants, for mechanics, and for la- "borers. The manifest purpose of the statute was to "give its benefits to employees engaged in the haz- "ardous business of operating railroads. When thus "limited it is constitutional; when extended further "it becomes unconstitutional."

The provisions of the Constitution of the State of Iowa, and the Fourteenth Amendment of the Constitution of

the United States, are in spirit identical in so far as either prohibits the imposing of penalties upon particular persons or corporations, which are not imposed upon others under like circumstances.

If the fellow-servant law enacted by the legislature of the State of Iowa had been construed to apply to all employees of railroad companies, it would, in the opinion of the Iowa court, have been a clear case of class legislation, and manifestly unconstitutional. When limited in its application to those engaged in the hazardous occupation of handling trains, the classification was held a natural and not an arbitrary one in that it applies equally to all in the same condition. If construed to apply to all employees of railroad companies, the classification would have been arbitrary and unnatural because it did not apply to all similarly situated. This, the illustration used by the court makes very plain. The classification attempted by the law, the constitutionality of which is here challenged, is arbitrary and unnatural, and does not result from any apparent natural reason.

In their business methods in rates to be charged for insurance and in commissions to be paid agents, there is nothing which places fire insurance companies in a class by themselves. There is nothing in the business of fire insurance which distinguishes it from others in these particulars, or indeed from those engaged in other lines of business. When fire insurance companies combine their experiences for the purpose of arriving at the true cost of insurance, they are only doing what all other underwriters must do to arrive at the same result. Life insurance by the combined experience of underwriters has resulted in the compilation of standard, statistical tables from which actuaries determine the cost of insurance at a given age, and such rates are quite uniform in the different companies. These comparatively uniform rates, based upon ascertained cost of insurance, as determined by the combined experience of underwriters, could only have been arrived at by permitting life insurance companies to enter into combinations relating to the manner

of transacting business. While the rates that should be paid for risks assumed by fire insurance companies probably cannot be ascertained with the same degree of scientific accuracy that rates for life insurance can be determined, still it is apparent that there is no such distinction between the two kinds of underwriting as divides them into natural classes for the purpose of legislation of the character here complained of. The fact alleged in the bill of complaint that by combining their experiences, fire insurance companies may better ascertain the true value of risks than they otherwise could do is not peculiar to fire insurance companies, but is common to all underwriters. Paying agents a commission for soliciting business is a method of compensation not confined to fire insurance companies, nor even to underwriters. Books, stocks, lands and many other commodities are sold by agents who receive a commission for their services. Persons employing such agents are, in respect to commissions paid, in precisely the same situation as are fire insurance companies, and yet this law does not apply to them. It is clear the law does not in this particular apply upon the same terms to all in the same situation. If the law prohibited agreements between all employers as to the rates of commission to be paid agents, it would seem to be a question of much gravity whether such employers are a natural class separate from employers who compensate their agents at so much per day, week, month or year. When, however, a law separates into a class either land owners, book publishers, life insurance companies or fire insurance companies, and forbids such particular class of employers to enter into agreements as to the rate of commissions to be paid their agents, nothing can be clearer than that such a law does not apply on the same terms to all in the same situation, and is hence unconstitutional.

The Texas law, imposing a twelve per cent. penalty and attorneys' fees upon life and health insurance companies, was held by this court in the Mettler case not to be in violation of the provisions of the Fourteenth Amendment.

In answer to the contention that to impose a penalty upon life and health insurance companies for failing to pay their policy obligations when due, not imposed upon other insurance companies under like conditions, was a classification, arbitrary and unreasonable, this court said that the ground for placing life and health insurance companies in a different class from fire and marine insurance companies was very obvious. The obvious ground for the classification seems to have been thought to be the frequent necessity of prompt payment of these obligations to carry out the object and purpose of the policy holder. It certainly is true that sure and speedy assistance to the family deprived of the sustaining hand of the husband and father is in the main the reason for the existence of such companies. Hence, it may be said, life and health insurance companies furnish a natural class for legislation intended to insure prompt payment of their policy obligations. The case, though of course conceded to have been rightly decided, was nevertheless close to the dividing line, as is shown by the dissenting opinion. It, however, brings out prominently the constitutional requirement to valid legislation of this character, to wit: that the class to which the law applies must exist as a class before the law is enacted. The law-making body may not at the same time arbitrarily create the class and then legislate with regard to it. The true inquiry would seem to be, is the legislative enactment so framed as to apply to all similarly situated, upon like terms? Tried by this rule, we may find in the health and life insurance companies, when called upon to meet their policy obligations, that which separates them from other underwriters called upon to perform their policy obligations. Hence they are not, in this respect, similarly situated. The statute, the validity of which is here in question, classifies fire insurance companies for the purpose of legislation, with respect to matters in no way peculiar to this class. No possible reason can be assigned why fire insurance companies should be prohibited from contracting with each other as to rates of insurance,

which would not apply, with at least equal force, to life, health, accident, marine and the various other kinds of insurance. The same is true as to contracts concerning commissions to be paid agents, and as to the method of doing business. It is common knowledge that life insurance companies compensate their agents principally upon the commission basis. A law which prohibits fire insurance companies from agreeing as to commissions to be paid agents, leaving life insurance companies free to contract in this respect, is a classification so utterly devoid of natural causes or inherent reasons for its existence, as to place it well within those cases which hold such legislation to be obnoxious to the constitutional provisions of the States and of the United States, intended to insure equal rights under, and protection of, the laws.

(b.) *THE STATUTE IN QUESTION ARBITRARILY INTERFERES WITH THE RIGHT OF CONTRACT IN THE CONDUCT OF A BUSINESS PRIVATE IN ITS CHARACTER.*

The statute in question does not limit its prohibition to unreasonable contracts, but, on the contrary, absolutely prohibits all agreements, whether reasonable or unreasonable, so far as rates of insurance, commissions to be charged by agents, or manner of transacting the business are concerned. Fire insurance is not a matter of prime necessity; nor is it a staple article of commerce. It was described by this court, in case of Paul *vs.* Virginia, 8 Wall., 168-183, in the following language:—

> "Issuing a policy of insurance is not a transaction "of commerce. The policies are simple contracts of "indemnity against loss by fire, entered into between "the corporations and the assured, for a consideration "paid by the latter. These contracts are not articles "of commerce in any proper meaning of the word. "They are not subjects of trade and barter offered in "the market as something having an existence and "value independent of the parties to them. They are

"not commodities to be shipped or forwarded from "one State to another and then put up for sale. They "are like other personal contracts between parties "which are completed by their signature and the "transfer of the consideration."

The subject of fire insurance presents many questions where parties engaged therein shall at least have the power to make all reasonable contracts in the conduct of their business. The science of fire insurance depends upon, not the experience of any one, but of the joint experience of many, companies, covering large and distinct territory. The classification as to risks is a complex and scientific matter. There are innumerable kinds of property, improved real property situated in the country, without any sort of fire protection; real estate situated in small towns, having no adequate fire protection; real property wholly or partially constructed as fire proof; real property with and without dangerous exposures; buildings used for purposes that are not hazardous, and those used for purposes that are extra hazardous; the many kinds of personal property; some classes of business, such as hardware, not extra hazardous; other classes, such as millinery establishments, mills, manufacturing plants, etc., containing a greater or less degree of hazard; some risks which prudent companies absolutely prohibit. The value of insurance depends upon the solvency of the company. The solvency of the company depends upon its receiving reasonable rates for the risks which it insures. Reasonable rates depends upon the comparison, analysis, and classification of the joint experience of many companies. All of these factors show the necessity of combined action of, to some extent, joint arrangement, and of the mutual interchange of experiences, in order that there may be determined, with some degree of certainty what are and what are not reasonable rates. The general public, as well as the specific companies, have an interest in this determination.

All contracts which have a tendency to maintain prices are not illegal.

This question was considered by the Court of Appeals in case of United States *vs.* Trans-Missouri Freight Association, 58 Fed., 58, and, while the opinion was not affirmed by this court, the conclusion as to the right to enter into reasonable contracts in restraint of trade was not dissented from. In that opinion, after a full review of the authorities, the court said, page 72:—

> "From a review of these and other authorities, it "clearly appears that when the Anti-Trust Act was "passed the rule had become firmly established in the "jurisprudence of England and the United States "that the validity of contracts restricting competition "was to be determined by the reasonableness of the "restriction. If the main purpose or natural and in- "evitable effect of a contract was to suppress compe- "tition or create a monopoly, it was illegal. If a con- "tract imposed a restriction that was unreasonably "injurious to the public interest, or a restriction that "was greater than the interest of the party in whose "favor it was imposed demanded, it was illegal. But "contracts made for a lawful purpose, which were not "unreasonably injurious to the public welfare, and "which imposed no heavier restraint upon trade than "the interest of the favored party required, had been "uniformly sustained, notwithstanding their tendency "to some extent to check competition. The public "welfare was first considered, and the reasonable- "ness of the restriction determined under these rules "in the light of all the facts and circumstances of each "particular case."

In the dissenting opinion filed in this court in the above-entitled case, 17 S. C. R., 540; 166 U. S., 290, Mr. Justice White said, page 348:—

> "The tendency of modern thought and decisions "has been no longer to uphold in its strictness the "doctrine which formerly prevailed respecting agree- "ments in restraint of trade. The severity with which "such agreements were treated in the beginning has "relaxed more and more *by exceptions and qualifica- "tions*, and a gradual change has taken place, brought

"about by the growth of industrial activities, and the "enlargement of commercial facilities which tend to "render such agreements less dangerous, because "monopolies are less easy of accomplishment."

In the same opinion, in quoting from the case of Matthews *vs.* Associated Press, 136 N. Y., 333, it was said:—

"The latest decisions of courts in this country and "in England show a strong tendency to very greatly "circumscribe and narrow the doctrine of avoiding "contracts in restraint of trade. The courts do not "go to the length of saying that contracts which "they now would say are in restraint of trade are, "nevertheless, valid contracts, and to be enforced; "they do, however, now hold many contracts not "open to the objection that they are in restraint of "trade which a few years back would have been "avoided on that sole ground, both here and in Eng-"land. The cases in this court which are the latest "manifestations of the turn in the tide are cited in "the opinion."

In the opinion delivered by Mr. Justice Brewer in case of Northern Securities Co. *vs.* United States, 193 U. S., 361, it was said:—

"Congress did not intend to reach and destroy "those minor contracts in partial restraint of trade "which the long course of decisions at common law "had affirmed were reasonable and ought to be up-"held."

In Herriman *vs.* Menzies, 35 L. R. A., 318 (1896), where an association of stevedores had agreed upon a schedule of minimum prices, the court, in sustaining the agreement, said:—

"Combinations between individuals or firms for "the regulation of prices, and of competition in busi-"ness, are not monopolies, and are not unlawful as "in restraint of trade, so long as they are reasonable,

"and do not include all of a commodity or trade, or "create such restrictions as to materially affect the "freedom of commerce."

And, again, the court said (page 320):—

"The parties themselves, it is true, have combined "their business as severally carried on by them, and "have agreed to be bound by a schedule or rate of "charges to be fixed by the association; but this in "itself is not an unlawful restraint of trade, so long "as it does not appear that the rates to be charged "are unreasonable, or the restrictions such as to pre- "clude a fair competition with others engaged in "the business."

In Central Shade-Roller Co. *vs.* Cushman, 143 Mass., 353; 9 N. E., 629, where an agreement between the manufacturers of shade rollers as to prices and territory was sustained, the court said:—

"The agreement does not refer to an article of "prime necessity, nor to a staple of commerce, nor "to merchandise to be bought and sold in the market, "but to a particular curtain fixture of the parties' own "manufacture. It does not look to affecting compe- "tition from outside—the parties have a monopoly "by their patents—but only to restrict competition "in price between themselves. Even if such an "agreement tends to raise the price of the com- "modity, it is one which the parties have a right to "make. To hold otherwise would be to impair the "right of persons to make contracts, and to put a "price on the products of their own industry."

See—

Fowle *vs.* Park, 131 U. S., 97;
Chicago Railway Co. *vs.* Pullman Co., 139 U. S., 89.

It would seem, therefore, that, because of the peculiar character of insurance contracts, and of the necessity, in

fixing reasonable prices to have the benefit of general experience of many companies, a reasonable arrangement, which should provide only for reasonable compensation in the matter of insurance, would not be void at common law. The statute in question, selecting fire insurance as a special class, prohibits, not only reasonable arrangements, but all agreements with reference to the amount of rates to be charged. We believe that this is an arbitrary infringement upon the right of contract.

In Vanzant *vs.* Waddel, 2 Yerger, 260-270, quoted approvingly in the Cotting case, 183 U. S., 105, it was said:—

> "Every partial or private law, which directly pro-
> "poses to destroy or affect individual rights, or does
> "the same thing by affording remedies leading to
> "similar consequences, is unconstitutional and void.
> "Were this otherwise, odious individuals and corpo-
> "rate bodies would be governed by one rule, and the
> "mass of the community, who made the law, by
> "another."

In Tiedeman on Police Power, page 302, it is said:—

> "It is part of the natural and civil liberty to form
> "business relations free from the dictation of the
> "State; that a like freedom should be secured and en-
> "joyed in determining the conditions and terms of
> "the contract which constitutes the base of the busi-
> "ness relation or transaction. It is therefore, the
> "general rule that a man is free to ask for his wares
> "or his services whatever price he is able to get and
> "others are willing to pay."

In Allgeyer *vs.* Louisiana, 165 U. S., 589, in describing the liberty preserved by the Fourteenth Amendment of the Constitution, the court said:—

> "The liberty mentioned in that amendment means
> "not only the right of the citizen to be free from the
> "mere physical restraint of his person, as by incar-
> "ceration, but the term is deemed to embrace the
> "right of the citizen to be free in the enjoyment of

"all his faculties; to be free to use them in all lawful "ways; to live and work where he will; to earn his "livelihood by any lawful calling; to pursue any "livelihood or avocation, and for that purpose to "enter into all contracts which may be proper, neces- "sary and essential to his carrying out to a successful "conclusion the purposes above mentioned."

In the recent case of Lochner *vs.* New York, 25 S. C. R., 544, where an Act of the New York legislature, which prohibited one engaged in the trade of a baker from working more than ten hours a day, was held unconstitutional, the court said:—

"A printer, a tinsmith, a locksmith, a carpenter, a "cabinetmaker, a dry goods clerk, a bank's, a law- "yer's, or a physician's clerk, or a clerk in almost any "kind of business, would all come under the power of "the legislature, on this assumption. No trade, no "occupation, no mode of earning one's living, could "escape this all-pervading power, and the Acts of the "legislature in limiting the hours of labor in all em- "ployments would be valid, although such limitation "might seriously cripple the ability of the laborer to "support himself and his family. In our large cities "there are many buildings into which the sun pene- "trates for but a short time in each day, and these "buildings are occupied by people carrying on the "business of bankers, brokers, lawyers, real estate, "and many other kinds of business, aided by many "clerks, messengers, and other employees. Upon "the assumption of the validity of this Act under "review, it is not possible to say that an Act, pro- "hibiting lawyers' or bank clerks, or others, from "contracting to labor for their employers more than "eight hours a day would be invalid."

And at page 545 it is said:—

"If the man works ten hours a day it is all right, "but if ten and a half or eleven his health is in dan- "ger and his bread may be unhealthy, and, there-

"fore, he shall not be permitted to do it. This, we "think, is unreasonable and entirely arbitrary. When "assertions such as we have adverted to become "necessary in order to give, if possible, a plausible "foundation for the contention that the law is a "'health law,' it gives rise to at least a suspicion that "there was some other motive dominating the legis- "lature than the purpose to subserve the public "health or welfare."

And, in conclusion, the court said:—

"It seems to us that the real object and purpose "were simply to regulate the hours of labor between "the master and his employees (all being men, *sui* "*juris*), in a private business, not dangerous in any "degree to morals, or in any real and substantial de- "gree to the health of the employees. Under such "circumstances the freedom of master and employee "to contract with each other in relation to their em- "ployment, and in defining the same, cannot be pro- "hibited or interfered with, without violating the "Federal Constitution."

In Frorer *vs.* People, 141 Ill., 171; 31 N. E., 397, where persons or corporations engaged in manufacturing or mining were prohibited from operating or being interested in truck stores which furnished goods to employees, in holding this legislation unconstitutional the court said:—

"If the General Assembly may thus deprive some "persons of substantial privileges allowed to other "persons under precisely the same conditions, it is "manifest that it may, upon like principle, deprive "still other persons of other privileges in contract- "ing, which, under precisely the same circumstances, "are enjoyed by all but the prohibited class; and it can "hardly be admissible that the legislative determina- "tion that the facts are such as to warrant this dis- "crimination is conclusive, for that would make the "General Assembly omnipotent, since, if that were "so, there could be nothing but its own discretion to "control its action in regard to every liberty enjoyed

"by the citizen; and it might find that the public wel-
"fare required that society should be divided into
"an indefinite number of classes, each possessing or
"being denied privileges in contracting and acquiring
"property, as favoritism or caprice might dictate.
"The privilege of contracting is both a liberty and a
"property right, and if A. is denied the right to con-
"tract and acquire property in a manner which he
"has hitherto enjoyed under the law, and which B.,
"C., and D. are still allowed by the law to enjoy, it is
"clear that he is deprived of both liberty and prop-
"erty to the extent that he is thus denied the right to
"contract."

In State *vs.* Goodwill, 33 West Va., 179-181; 6 L. R. A., 621, where persons or corporations "engaged in mining "coal or other minerals, or any kind of manufacturing" were compelled to pay their employees in lawful money of the United States, the court, in holding the enactment unconstitutional, said (page 622):—

"It is by its terms limited to persons, corporations,
"etc., engaged in mining coal or other minerals, or
"any kind of manufacturing. While these terms in-
"clude not only all persons engaged in mining coal
"and other minerals, and all persons engaged in
"manufacturing iron and steel, but all persons en-
"gaged in any kind of manufacturing, such as the
"shoemaker, the cigarmaker, the undertaker, the dis-
"tiller, the brickmaker, the jeweler, the weaver, the
"milliner, the dairyman and the miller, it does not
"include the wholesale merchant, with his hundreds
"of clerks and agents; the railroad construction com-
"panies, or railroad companies, with their thousands
"of employees. The propriety or the necessity, if
"such exists, of applying the provisions of the statute
"to these latter is equally as great, if not more so, as
"it is to any of the former. The rights and privileges
"of certain specified employers are abridged, while
"others of the same class are left free."

It is further said:—

"The rights of every individual must stand or fall "by the same rule of law that governs every other "member of the body politic under similar circum- "stances; and every partial or private law which di- "rectly proposes to destroy or affect individual rights, "or does the same thing by restricting the privi- "leges of certain classes of citizens and not of others, "when there is no public necessity for such discrimi- "nation, is unconstitutional and void. Were it other- "wise, odious individuals or corporate bodies would "be governed by one law, and the mass of the com- "munity, and those who make the law, by another; "whereas, a like general law, affecting the whole "community equally, could not have been enacted."

In State *vs.* Fire Creek Coal & Coke Co., 33 West Va., 188; 6 L. R. A., 359, where a statute prohibiting operators of mines and manufacturers from selling supplies and merchandise to their employees at a greater per cent. of profit than to others, was held unconstitutional, the court said:—

"There are many considerations for selling goods "or supplies at less per cent. of profit to one custo- "mer than to others. The goods may be of the 'like "'character, kind, quality and quantity,' and still there "may be considerations, entirely proper, why the sale "should not be at the same pr[illegible] in all cases—such "as the character and prompt[illegible]s of the customer; "the risk of loss or time of payment; the aggregate "amount of purchases by the same person of different "kinds of goods or supplies. It may be more profit- "able to sell a large bill of different kinds of goods "to a large consumer than to sell one of the same kind "of articles to one who buys nothing else. The stat- "ute is a Procrustean bed. It consigns all sizes "and conditions to the same measure of treatment, "regardless of their differences. It excludes all free- "dom in trade, and all consideration of mutual bene- "fit, and even charity. If the employer sells goods to "the family of some friend, in indigent circumstances, "at less than cost, then, under this statute, he must

"sell at the same price to all his employees. But it is "unnecessary to illustrate the vices, the crudities and "the injustice of the statute. That it is an attempt "to do for private citizens, under no physical or "mental disabilities, what they can best do for them- "selves, is apparent. It selects miners and manufac- "turers as a class, and denies to them privileges which "are not only proper and legitimate in themselves "but to some extent necessary and unavoidable in "the conduct of business, privileges which concern "private affairs solely, and which are enjoyed by all "other classes and citizens. It is an attempt on the "part of the legislature to do what, in this country, "cannot be done; that is, to prevent persons who are "*sui juris* from making their own contracts."

In State *vs.* Kreutzberg, 114 Wis., 530; 90 N. W., 1102, a statute of Wisconsin prevented an employer from discharging an employee because he belonged to a labor organization. In holding the statute void, the court said:—

"Free will in making private contracts, and even "in greater degree in refusing to make them, is one "of the most important and sacred of the individual "rights intended to be protected. * * * We must "not forget that our Government is founded on the "idea of equality of all individuals before the law."

And further, at page 1104, the court said:—

"We have sought to give to the legislature the "benefit of every doubt. We have examined the de- "cided cases in great number; we invited counsel for "the State to suggest, and we have given loose to "our own invention and imagination; but we are "unable to discover reason to think that the legis- "lation is needful for, or even calculated to, protect "public welfare, though cogent reasons to the con- "trary readily present themselves. Those courts "which have sustained the various laws above men- "tioned, interfering in some degree with freedom of "contract, when they have discussed the subject, have

"found some respect in which the public were inter-
"ested, or thought to be."

In Harding *vs.* People, 160 Ill., 459; 43 N. E., 624, where miners of coal, who paid their employees by weight, were required by an Illinois statute to weigh in a particular manner, the court, in holding the statute void, said:—

"Each person subject to the laws has a right that
"he shall be governed by general public rules. Laws
"and regulations entirely arbitrary in their character,
"singling out particular persons not distinguished
"from others in the community by any reason applica-
"ble to such persons, are not of that class. Distinc-
"tions in rights and privileges must be based upon
"some distinction or reason not applicable to others."

And further, at page 626, the court said:—

"Here was an arrangement, amounting to a con-
"tract between the parties, with which all the con-
"tracting parties were satisfied, and the testimony
"upon which plaintiffs in error were convicted came
"from miners who left during the miners' strike of
"1894, and were not again employed by the company.
"It seems that a law whch deprives men engaged in
"the business of mining from contracting with each
"other for the purpose of ascertaining the weight of
"the coal mined, or the amount due them, in any
"manner mutually satisfactory, cannot be sustained."

In Republic Iron & Steel Co. *vs.* State, 66 N. E., 1008, a statute of Indiana, requiring weekly payment of wages for labor, was held unconstitutional, as infringing the right of private contract. In the course of the opinion the court said:—

"Any law or policy that disables the citizen from
"making a contract whereby he may find lawful,
"needed, and satisfactory employment is unreason-
"able. It may be that the workman will desire and

"request his employer, as conducive to economy and "saving, to keep back all wages not needed for cur- "rent necessities. Whether he leaves his surplus "earnings with his employer, or deposits them with "the building and loan association or with the sav- "ings bank, involves no public interest and affects no "public concern."

We, therefore, submit that this statute, prohibiting all contracts regulating rates to be charged for insurance, whether such rates are reasonable or not, and whether such agreements tend to lower instead of raising the charges which the public shall pay, is an unwarrantable invasion upon the rights of contract and the private business of providing fire insurance. The peculiar character of the business; the fact that insurance is not a prime necessity or a staple product; the fact that reasonable rates depend upon joint experiences makes some understanding and some agreement practically a necessity. The various kinds of insurance companies and the diverse ways in which they are organized—stock, mutual, and assessment companies—renders a complete monopoly of the insurance business an impossibility, and reasonable rates and safe insurance are better protected and more readily furnished where some concert of action, in the method of determining what are and what are not reasonable rates, can be had.

Even if the court does not accept as sound our contention that it is not reasonable to forbid every agreement as to rates, we submit that as the prohibition does not stand alone the whole Act must fall if it is unconstitutional in its other, most vital, provisions. These we will now consider.

(C.) *PROHIBITION AS TO AMOUNT OF COMMISSIONS ALLOWED AGENTS, AND AS TO MANNER OF TRANSACTING BUSINESS.*

It is difficult to conceive how the interests of the public can be injuriously affected by any agreement or understanding, as between insurance companies, as to the amount

of commissions to be allowed agents for procuring risks. A uniformity in this respect would tend to economy of management, and to a reduction of the charges which the public should pay.

This court, in the Ellis case, 165 U. S., 163, in quoting approvingly from the case of San Antonio Railway *vs.* Wilson, 19 S. W., 910, where the Texas Court of Appeals held a statute unconstitutional which provided that a railroad company refusing to pay its indebtedness to an employee within twenty days after demand should pay a penalty of twenty per cent. in addition to the amount due, said:—

> "But when we consider the relations of railway "companies to their own servants, both as to con- "tracts of employment and payment, we find a field "in which special legislation has no right ordinarily "to enter, and in which railways stand on the same "footing with all other corporations and persons."

There may be, and frequently is, a ruinous competition in the matter of extravagant commissions allowed to agents. Unreasonable commissions allowed agents tend to raise the rates of insurance and to increase the cost of operation. A uniform arrangement as to agents' commissions is one which the law should encourage rather than legislate against.

The same is true as to the manner of transacting fire insurance business within the State. There are many reasons why a uniform method would be for the interest of the public in their relations to fire insurance companies. Many States, by statute, require a uniform, a standard form, of policy to be issued. It would simplify matters if uniform applications were issued.

It is impossible to present any fair argument whereby the public can suffer in the matter of uniform commissions to agents or of uniform methods of transacting business. On the other hand, there are many reasons why such uniformity in the conduct of a business of this character would simplify the relations between policy holders and the company.

Section 1754 provides that—

> "it shall be unlawful for two or more fire insurance "companies * * * or for the officers, agents or "employees of such companies, to make or enter into "any * * * agreement relating to * * * the "manner of transacting fire insurance in this State."

We have heretofore asked, "Why discriminate against "*fire* insurance companies in this particular? How is it "possible to classify insurance companies in the matter of "making agreements relating to the manner of transacting "their business?"

But apart from a discrimination resting upon no proper classification, how can it be held other than an unconstitutional violation of the right to contract, to forbid all agreements relating to the manner of transacting business?

Why may not fire insurance companies agree that they will adopt a standard form of policy; that losses shall be adjusted by a Board of Adjusters mutually chosen; that all proofs made and information obtained, in case of a loss covered by the same companies, shall be furnished by one to the other; that where risks are rejected because of some derogatory facts, these shall be communicated; that the same counsel shall be retained in contesting claims; that incendiaries shall be prosecuted by mutual contributors; that the same agents to solicit insurance shall be employed; and that a thousand and one things shall be done, not injurious to the public, but mutually beneficial?

We submit that the attempt on the part of the legislature to prevent any understanding or agreement as to commissions to agents or as to methods of doing business is an arbitrary, unfair, and unreasonable, invasion of the private right of contract, and the right to conduct a private business within legitimate lines.

The record in this case presents, we believe, with controlling emphasis, the unconstitutionality of the Iowa statute. The classification of fire insurance companies, as distinguished from other insurance companies, banks, loan and building associations, and other corporations en-

gaged in trade, is arbitrary and unnatural. There are no controlling reasons why same should be made. The penalties imposed by the statute are unusual, unnecessary and unjust. The prohibition of the right of contract should not be permitted to extend to reasonable contracts. These should be sustained. The prohibition as to commissions to agents and as to the method of doing business is arbitrary in the extreme. We believe the statute is within the condemnation of this court and is contrary to the great weight of authority, as found in the decisions of other appellate tribunals.

JOHN G. JOHNSON,
GEORGE H. CARR,
JAMES C. DAVIS,
For Appellees.

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IN THE

Supreme Court of the United States.

Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

No. 50. IN EQUITY.

Beryl F. Carroll, Auditor of State of the State of Iowa,
Appellant,

vs.

The Greenwich Insurance Company of New York
et al., Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

ADDITIONAL STATEMENT FOR APPELLEES.

JOHN G. JOHNSON,
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IN THE SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

Beryl F. Carroll, Auditor of the State of Iowa, Appellant,

vs.

The Greenwich Insurance Company of New York et al., *Appellees.*

October Term, 1905.

ADDITIONAL STATEMENT FOR APPELLEES.

To enable the court to appreciate that the Legislature of the State of Iowa did not in any wise intend that Sections 1754 to 1757 of the Code of Iowa, the sections of the law in controversy, should be held as conditions under which foreign insurance companies could do business in Iowa, we desire to submit the following synopsis of the insurance law of that State.

1. The entire statute law of Iowa, governing insurance other than life, has been codified, and is found in Chapter 4, of Title 9, covering pages 609 to 630, inclusive, and Sections 1684 to 1758, inclusive, of the Code of 1897. The title of the chapter is "Of Insurance Other Than Life." There have been two slight amendments of the law since the Code of 1897 took effect, to wit, Chapter 73

of the Acts of the 29th G. A., which refers to the character of notice and proofs of loss in the matter of personal property, and Chapters 56, 57, and 58 of the laws of the 30th G. A. These chapters refer respectively to the examination of insurance companies, licensing of insurance agents, and consolidation or re-insurance of the risks of insurance companies, and apply with equal force to all companies, whether foreign or domestic.

2. The only statutes of the State of Iowa which apply exclusively to foreign insurance companies are the statutes which provide the terms upon which foreign companies may do business in Iowa, and the statute authorizing the revocation by the Auditor of the certificate of a foreign company, authorizing such foreign company to do business in Iowa. Such statutes are as follows:—

"SEC. 1721. *Foreign companies—capital required.*—"No insurance company, association or partnership "incorporated, associated or organized under or by "the laws of any other state or any foreign govern-"ment, for the purposes specified in this chapter, "shall directly or indirectly take risks or transact "any business of insurance in the state, unless pos-"sessed of two hundred thousand dollars of actual "paid up capital, exclusive of any assets deposited "in other states and territories for the special benefit "or security of the insured therein; but the pro-"visions of this section shall not apply to mutual "insurance companies or associations specifically or-"ganized for the purpose of and insuring a single "class of property only; and companies organized "to insure plate glass exclusively are not required "to have a greater capital than one hundred thou-"sand dollars; but such companies organized to "insure against personal injury, disablement or "death resulting from traveling or general accidents "by land or water exclusively, having an actual "paid up capital of one hundred thousand dollars "and one hundred thousand dollars cash surplus "safely invested, exclusive of any assets deposited "in other states and territories for the special benefit

"or security of the insured therein, shall be deemed "to be possessed of two hundred thousand dollars "actual paid up capital within the meaning of this "section.

"SEC. 1722. *Service of process—statement.*—Any "foreign company desiring to transact the business "of insurance under this chapter, by an agent or "agents in the state, shall file with the auditor of "state a written instrument, duly signed and sealed, "authorizing such auditor to acknowledge service of "notice or process for and in behalf of such com- "pany in this state, and consenting that service of "notice or process may be made upon the auditor "of state, and when so made shall be taken and "held as valid as if served upon the company ac- "cording to the laws of this or any other state, and "waiving all claim or right or error by reason of "such acknowledgment of service. Such notice or "process with a copy thereof may be mailed to the "auditor of state at Des Moines, Iowa, in a regis- "tered letter addressed to him by his official title, "and he shall immediately upon its receipt acknowl- "edge service thereon on behalf of the defendant "foreign insurance company by writing thereon, "giving the date thereof, and shall immediately "return such notice or process in a registered letter "to the clerk of the court in which the suit is pend- "ing, addressed to him by his official title, and shall "also forthwith mail such copy, with a copy of his "acknowledgment of service written thereon, in a "registered letter addressed to the person or cor- "poration who shall be named or designated by "such company in such written instrument. And "such company shall also file with the auditor a "certified copy of its charter or deed of settlement, "together with a statement under oath of the presi- "dent or vice-president or other chief officer and "the secretary of the company for which they may "act, stating the name of the company, the place "where located, the amount of its capital, with a "detailed statement of the facts and items required "from companies organized under the laws of this "state, and a copy of the last annual report, if any,

"made under any law of the state, by which such "company was incorporated; and no agent shall be "allowed to transact business for any company "whose capital is impaired by liabilities as specified "in this chapter to the extent of twenty per cent. "thereof, while such deficiency shall continue.

"SEC. 1723. *Foreign mutual companies.*—Any "foreign mutual company possessed of cash assets "safely invested, amounting to at least two hundred "thousand dollars over and above all its liabilities, "including the reserve for reinsurance required by "the laws of the state, shall be held to be possessed "of two hundred thousand dollars of actual paid up "capital, within the meaning of the two preceding "sections, and may be authorized to take risks and "transact the business of insurance in the state on "complying with the provisions of law applicable "to them and relating to foreign insurance com-"panies.

"SEC. 1724. *Certificate.*—When any foreign com-"pany has fully complied with the requirements of "law and become entitled to do business, the auditor "of state shall issue to such company a certificate "of that fact, which certificate shall be renewed "annually on the first day of March, if the auditor "is satisfied that the capital, securities and invest-"ments of such company remain unimpaired, and "the company has complied with the provisions of "law applicable thereto."

The court will note that the only requirements of foreign companies, in order that they may do business in the State of Iowa, as set out in the foregoing statutes, are that the companies shall have necessary capital, make the proper statement as to solvency, file a written instrument authorizing the Auditor to accept service of process, and furnish certain detailed information required by the statutes. There is no suggestion in the conditions under which foreign companies shall transact business in Iowa that, as distinguished from domestic companies, they must comply with all laws of the State. The only provision of the law which authorizes the revocation of the

certificate of a foreign company is found in Section 1735 of the Code, which is as follows:—

"SEC. 1735. *Revocation of certificate of foreign "company.*—The auditor of state shall be authorized "to examine into the condition and affairs of any "insurance company, as provided for in this chapter, "doing business in this state, not organized under "its laws, or cause such examination to be made "by some person or persons appointed by him hav- "ing no interest in any insurance company; and "when it shall appear to his satisfaction that the "affairs of any such company are in an unsound "condition, he shall revoke the certificates granted "in its behalf, and cause a notification thereof to "be published in some newspaper of general circu- "lation, published at the seat of government, and "no agent or agents of such company after such "notice shall issue policies or renew any previously "issued."

The condition of such revocation is "when it shall ap- "pear to his (the Auditor's) satisfaction that the affairs "of any such company are in unsound condition," and this is the only condition under which the certificate of a foreign company, as distinguished from an insurance company, can be revoked.

3. All other provisions as to insurance companies apply by their terms equally to foreign and domestic companies, the usual prefatory sentence in each of the sections being in the following language: "Every insurance "company of the character provided for in this chapter, "doing business in this State, organized under the laws "of this or any other State or country," &c., and in the multitude of provisions which apply equally to both classes of companies we find Section 1709-1710, describing the kinds of insurance and limitation of risk; Section 1714, requiring annual statements from all companies, foreign and domestic, which statements shall be made to the Auditor; Section 1737, requiring every insurance com-

pany of the character provided in this chapter, doing business in the State, organized under the laws of this or any other State or country, to publish annually in newspapers of general circulation a copy of the certificate from the Auditor that the said company has complied with the requirements of the law—it will be noted that the domestic companies, in common with the foreign companies, are required to obtain this certificate annually; Section 1738, prohibiting false statements as to the condition of the company, which applies equally to foreign and domestic companies, and Sections 1739 and 1740, providing the character of the statement to be made and penalty for false statements. Then follow the sections in controversy, being 1754 to 1757, applying to all companies doing business in the State.

We submit that an examination of the entire chapter of the statutes applying to insurance in force in the State of Iowa demonstrates, as to the intention of the Legislature of that State and the policy of the State, that, after foreign companies have been admitted, having made a proper showing of solvency, filed their articles with the Auditor, and agreed that service in the institution of suits may be made upon or accepted by the Auditor (the provision as to the revocation of the certificate of a foreign company being limited solely to the ascertainment of whether or not the company is in an unsound condition), from the time of the admission of foreign companies to do business in the State they are treated by the Legislature upon exactly the same terms as are domestic companies.

The fact that specific provision is made as to the terms upon which foreign insurance companies may do business in Iowa excludes the thought that this class of companies is governed by the general law applying to all foreign corporations, and limits the right to revoke the certificate of foreign companies to do business to the specific condition contained in the law applying to this class of companies.

In this connection, we desire to call the attention of the court a little more in detail to the case of Fidelity Mutual

Life Association *vs.* Mettler, 185 U. S., 308, where this court concluded, after a review of the Texas statutes, that the provisions under consideration in that case were made conditions under which domestic and foreign insurance companies were permitted to do business in Texas, the court stating its conclusion in the following language:—

> "It is apparent from the various sections of the "title relating to insurance, to which we have before "referred, that this particular liability amounted to "one of the conditions on which life and health in- "surance companies were permitted to do business "in Texas, and the power of the State in the matter "of the imposition of conditions on its own and "foreign corporations has been repeatedly recog- "nized by this court."

The court, however, did not base its conclusion in this case upon this ground, but subsequently in the opinion determined that the law of Texas was not an arbitrary classification, but rested upon sufficient reason.

In this opinion the case of Cargill *vs.* Minnesota, 180 U. S., 452, was not referred to. In the Cargill case the State of Minnesota sought to prevent the W. W. Cargill Company, a corporation of Wisconsin, from operating an elevator in the State of Minnesota without first applying to the Railroad and Warehouse Commission for a license, under the provisions of the Minnesota law. The Minnesota law contained the following express provision:—

> "*Such license shall confer upon the licensee full* "*authority to operate such warehouse or elevator in* "*accordance with the laws of this State and the rules* "*and regulations prescribed by said Commission, and* "*every person, company or corporation receiving such* "*license shall be held to have accepted the provisions* "*of this act, and thereby to have agreed to comply* "*with same.*"

This court, in a unanimous opinion, determined the effect of the acceptance of a license by the company under

the provisions of the law above quoted, and determined that the acceptance of such a license would not prevent the licensee from questioning the constitutionality of any of the laws or regulations made by the authorities of the State, the court saying, at page 468:—

> "The answer to this suggestion is that the acceptance of a license, in whatever form, will not impose upon the licensee an obligation to respect or to comply with any provisions of the statute or with any regulations prescribed by the state Railroad and Warehouse Commission that are repugnant to the Constitution of the United States."

This decision, wherein the right of a foreign corporation to question the constitutionality of the law of a State under which it has the right to do business is affirmed, clearly sustains the right of appellees to question the constitutionality of the law under discussion.

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Attorneys for Appellees.

Supreme Court of the United States.

No. 50.—October Term, 1905.

Beryl F. Carroll, Auditor of State of the State of Iowa, Appellant,
vs.
The Greenwich Insurance Company of New York et al.

Appeal from the Circuit Court of the United States for the Southern District of Iowa.

[November 27, 1905.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a bill brought by a number of fire insurance companies, incorporated in States other than Iowa, to enjoin the auditor of that State from enforcing §§ 1754, 1755 and 1756 of the Iowa Code, 1897. The ground of the bill is that these sections are invalid under the State Constitution and the Fourteenth Amendment of the Constitution of the United States. There is a reference also to Article 1, Section 10, and an oblique suggestion that the law impairs the obligation of contracts. The defendant demurred, and the Circuit Court issued an injunction as prayed, which was made perpetual by final decree. 125 Fed. Rep. 121. Thereupon the defendant appealed to this Court.

By section 1754, "It shall be unlawful for two or more fire insurance companies doing business in this State, or for the officers, agents or employes of such companies, to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring the same, or the manner of transacting the fire insurance business within this State; and any such company, officer, agent or employe violating this provision shall be guilty of a misdemeanor," and a fine is imposed for each offense. By § 1755 it is made the duty of the auditor of state to summon for examination, under oath, any officer, agent or employe suspected of violating § 1754, and if he determines that the company is guilty, or if the officer or agent fails to appear, to revoke the authority of the company to do business in the State for one year. By § 1756 an appeal is given from the decision of the auditor to the district court, the case to be tried *de novo*, as equitable causes are tried. By § 1757 the statements made upon the examination before the auditor or county court shall not be used in any criminal prosecution against the person making them.

The bill sets forth the necessity for every insurance company to gather all the experience available into one mass and to analyze and classify it scientifi-

cally in order to ascertain the true value of risks, and that it will add greatly to the expense if each company is required to employ a separate person to do the work. It charges, upon information and belief, that if the plaintiffs attempt to combine their experience and to employ the same person to analyze it, the auditor will summon them and revoke their authority to do business in the State. It further alleges that the plaintiffs desire not only to do what has been stated for their guidance in establishing rates, but to agree what classes of risks are non-insurable, how various risks shall be classified, and as to other matters relating to the manner of doing business. It repeats the charge, upon information and belief, that if the plaintiffs proceed in this manner the auditor will order an examination and revoke their licenses, and prays for an injunction against enforcing in any manner the above-mentioned sections of the Iowa Code. The Circuit Court considered that the statute was not invalid under the Constitution of Iowa, but held that the prohibitions of agreements as to the amount of commissions to be allowed, or as to the manner of transacting the fire insurance business in the State, were contrary to the Fourteenth Amendment. While waiving a discussion of the clause against combinations as to rates, it seemingly regarded the provisions of § 1754 as inseparable, and issued a general injunction forbidding the enforcement against the plaintiffs of §§ 1754, 1755 and 1756.

We assume, for purposes of decision, that the bill means that the auditor threatens and intends to enforce the act in case the plaintiffs do what they desire to do, and that if § 1754 is contrary to the Constitution of the United States, a proper case for an injunction is made out. *Osborn* v. *Bank of the United States*, 9 Wheaton, 738, 839, 840. See *Cleveland* v. *Cleveland City Ry. Co.*, 194 U. S. 517, 531; *Detroit* v. *Detroit Citizens' Street Ry. Co.*, 184 U. S. 368, 378. We assume further that the position of the plaintiffs is not affected by the fact that they are foreign corporations. The act is in general terms, and hits all insurance companies. If it is invalid as to some, it is invalid as to all. *United States* v. *Ju Toy*, 198 U. S. 253, 262, 263. That the requirements of the act might have been made conditions to foreign companies' doing business in the State, *Fidelity Life Ins. Co.* v. *Mettler*, 185 U. S. 308, *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28, is immaterial, since, as we understand the statute, the legislature did not attempt to reach the result in that way. A company lawfully doing business in the State is no more bound by a general unconstitutional enactment than a citizen of the State. *W. W. Cargill Co.* v. *Minnesota*, 180 U. S. 452.

We pass to the question upon which the Circuit Court decided the case, namely, the constitutionality of § 1754, the only section which we find it necessary to consider. Whatever may be thought of the policy of such attempts, it cannot be denied in this Court, unless some of its decisions are

to be overruled, that statutes prohibiting combinations between possible rivals in trade may be constitutional. The decisions concern not only statutes of the United States, *Northern Securities Co.* v. *United States*, 193 U. S. 197, *Swift* v. *United States*, 196 U. S. 375, but also State laws of similar import. *Smiley* v. *Kansas*, 196 U. S. 447. *National Cotton Oil Co.* v. *Texas*, 197 U. S. 115.

In view of these cases further discussion is unnecessary, but we will add a few words. While we need not affirm that in no instance could a distinction be taken, ordinarily if an act of Congress is valid under the Fifth Amendment it would be hard to say that a State law in like terms was void under the Fourteenth. It is true that by the provision in the body of the instrument Congress has power to regulate commerce, and that the act of Congress referred to in the cases cited was passed in pursuance of that power. But even if the Fifth Amendment were read as contemporaneous with the original Constitution, the power given in the commerce clause would not be taken to override it so far as the Fifth Amendment protects fundamental personal rights. It is only on the ground that the right to combine at will is a fundamental personal right that it can be held to be protected by the Fourteenth Amendment from any abridgment by the States. *Cincinnati Street Ry. Co.* v. *Snell*, 193 U. S. 30, 36. Many State laws which limit the freedom of contract have been sustained by this Court, and therefore an objection to this law on the general ground that it limits that freedom cannot be upheld. There is no greater sanctity in the right to combine than in the right to make other contracts. Indeed, Mr. Dicey, in his recent work on Law and Public Opinion in England during the Nineteenth Century, indicates that it is out of the very right to make what contracts one chooses, so strenuously advocated by Bentham, that combinations have arisen which restrict the very freedom that Bentham sought to attain, and which even might menace the authority of the State. If then the statute before us is to be overthrown more special reasons must be assigned.

At the argument before us more special reasons were assigned. It was pressed that there is no justification for the particular selection of fire insurance companies for the prohibitions discussed. With regard to this it should be observed, as is noticed by the appellees, that a general statute of Iowa prohibits all contracts or combinations to fix the price of any article of merchandise or commodity, or to limit the quantity of the same produced or sold in the State, Code of 1897, § 5060, and that this section covers fire insurance. *Beechley* v. *Mulville*, 102 Iowa, 602. Therefore the act in question does little if anything more than apply and work out the policy of the general law in a particular case. Again, if an evil is specially experienced in a particular branch of business, the Constitution embodies no prohibition of laws confined to the evil, or doctrinaire requirement that

they should be couched in all-embracing terms. It does not forbid the cautious advance, step by step, and the distrust of generalities which sometimes have been the weakness, but often the strength, of English legislation. *Otis* v. *Parker*, 187 U. S. 606, 610, 611. And if this is true, then in view of the possible teachings to be drawn from a practical knowledge of the business concerned, it is proper that Courts should be very cautious in condemning what legislatures have approved.

If the legislature of the State of Iowa deems it desirable artificially to prevent, so far as it can, the substitution of combination for competition, this Court cannot say that fire insurance may not present so conspicuous an example of what that legislature thinks an evil as to justify special treatment. The imposition of a more specific liability upon life and health insurance companies was held valid in *Fidelity Mutual Life Insurance Co.* v. *Mettler*, 185 U. S. 308. See also *Missouri Pacific Ry. Co.* v. *Mackey*, 127 U. S. 205. *Orient Insurance Co.* v. *Daggs*, 172 U. S. 557. *Otis* v. *Parker*, 187 U. S. 606. *Home Life Insurance Co.* v. *Fisher*, 188 U. S. 726, 727.

But it is said that, however it may be as to some regulations of fire insurance, these, or at least the last two of them, forbidding agreements as to agents' commissions and the manner of transacting business, are not to be justified. In order to make this out the scope of the provisions was exaggerated both in the argument and in the bill. The bill seems to assume that the statute forbids insurance companies to obtain and use each other's experience, or to employ the same person to work up the results. It does not. It simply forbids an agreement between the companies relating to the rates which may be based upon those results. No doubt an agreement between the companies readily would be inferred, if they were found all to charge the same rates; but an agreement between the companies is the only thing aimed at, and if they avoid that they escape the law. So it was suggested in argument that they could not employ the same adjuster in case of loss. We do not perceive anything to hinder their doing so, although it may be that they would have to be careful about the terms of his authority. The object of the law, we assume, until the Iowa Court shall decide otherwise, is single, to keep up competition, and the general language is to be restricted by the specific provisions and to the particular end. Limited as we understand it to be limited, the statute goes no further than others which have been sustained, and does not contravene the Constitution of the United States.

The argument before us very properly was rested on the Fourteenth Amendment. Therefore it is unnecessary to discuss the other objections suggested in the bill.

Although we have conceded that the bill makes a case for an injunction if its premises are true, it cannot be understood to charge that the auditor

will go further than to enforce the act as properly construed. The allegations upon information and belief, which we have stated, probably mean no more than that the plaintiffs reasonably suppose that the auditor will do his duty. They are pressed to the verge when they are taken to set forth a threat to do that. They certainly do not show that he threatens to do more.

Decree reversed.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 50.—October Term, 1905.

Beryl F. Carroll, Auditor of the State of Iowa, Appellant,
vs.
The Greenwich Insurance Company of New York, etc.

Appeal from the Circuit Court of the United States for the Southern District of Iowa.

[November 27th 1905.]

Mr. Justice Harlan, concurring.

It is clear from the averments of the bill that the insurance companies had not, prior to the institution of this suit, made any combination or agreement, among themselves, relating to the rates to be charged for insurance or to the amount of commissions to be allowed agents for procuring insurance or to the manner of transacting fire insurance business within the State. They expressed a desire to make such a combination or agreement, but were apprehensive that by doing so they would come into conflict with the State authorities. The Auditor had done nothing under the statute and will have nothing to do in execution of its provisions, unless the insurance companies enter into the forbidden combination or agreement. Nevertheless, the plaintiffs came into court, avowed that they had not as yet violated the statute, but asked to be informed whether, in the event they concluded to do so, their officers, agents or employes could be legally summoned before the State Auditor for examination, as prescribed in section 1755. In other words, in advance of anything being done in violation of the statute or of any steps being taken by the Auditor in execution of its provisions, the opinion of the court was asked and obtained as to its constitutionality. This is a very convenient—and, in my judgment, a mischievous—mode of obtaining the opinion of a court upon an abstract question of the constitutionalty of a statute which has not been and may never be violated, and under which no case may ever arise calling for judicial interference. It is as if the plaintiffs had addressed a personal communication to the court asking to be informed as to what they might safely to. It seems to me that the suit has been prematurely brought. If the plaintiffs should make such a combination as is forbidden by the statute, the time to seek judicial interference in their behalf would be when the State Auditor proceeds or in some definite way indicates his purpose to proceed under section 1755. I think the decree below should be re-

versed and the bill ordered to be dismissed, upon the ground that no facts existed, at the time the suit was brought, to justify a judicial tribunal in delivering a judgment as to the constitutionality of the State statute.

As, however, the court considered the case upon the merits, it is appropriate to say that I concur with the court in holding that the section of the statute which is assailed is not invalid. The business of fire insurance is of such a peculiar character, so intimately connected with the prosperity of the whole community, and so vital to the security of property owners, that it is competent for the State to forbid combinations and agreements among fire insurance companies doing business within its limits, in reference to rates, agents' commissions and the manner of transacting their business. If, in the judgment of the State, the people who desire insurance upon their property are put at a disadvantage when confronted by a combination or agreement among insurance companies, I do not perceive any sound reason why, preserving the individual right of contracting, it may not forbid such combinations and agreements, and thereby enable the insured and insurer to meet on terms of equality. Surely, the State could enact such a regulation with reference to companies organized under its own laws. If that be so, it cannot be that such a regulation may not be made applicable to foreign insurance companies doing business in the State only by its consent.

True copy.

Test:

Clerk Supreme Court, U. S.